


1 In response to the order to show cause as the exhaustion of the administrative remedies,
2 Plaintiff contends that the lack of exhaustion of the administrative remedies is not clear from the
3 face of the complaint because the “administrative remedies were unavailable.” (ECF No. 13 at
4 6.)² Based on Plaintiff’s contentions in the current response to the order to show cause, the Court
5 will vacate the Findings and Recommendations recommending dismissal of the action for failure
6 to exhaust. (ECF No. 7.) However, because exhaustion of the administrative remedies is an
7 affirmative defense, the Court makes no ruling as to whether Plaintiff has, in fact, exhausted the
8 administrative remedies. Inasmuch as the Court will vacate the Findings and Recommendations
9 recommending dismissal for failure to exhaust, Plaintiff’s motion for an extension of time to
10 comply with all future deadlines is denied as unnecessary as there are currently no pending
11 deadlines in light of this order. (ECF No. 15.) Plaintiff is advised the Court will screen his
12 complaint pursuant to 28 U.S.C. § 1915A in due course.

13 Accordingly, it is HEREBY ORDERED that:

- 14 1. The Findings and Recommendations issued on January 22, 2025 (ECF No. 7), are
15 VACATED; and
- 16 2. Plaintiff’s motion for an extension of time filed on March 3, 2025 (ECF No. 15) is
17 DENIED as unnecessary.

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20 IT IS SO ORDERED.

21 Dated: March 4, 2025


22 _____
23 STANLEY A. BOONE
24 United States Magistrate Judge

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27 _____
28 ² Plaintiff also submits that there is a delay of 30 to 60 days in receipt of the mail at the United States Penitentiary in Atwater. (ECF No. 15.)