


1 However, the attachments to plaintiff's objections reveal that he did not exhaust his
2 administrative remedies prior to filing suit because he did not receive a denial from the Director's
3 Level of Review until March 28, 2008, two months after he commenced this action. A prisoner
4 must exhaust available administrative remedies before filing any papers in federal court and is
5 not entitled to a stay of judicial proceedings in order to exhaust. *Vaden v. Summerhill*, 449 F.3d
6 1047, 1051 (9th Cir. 2006); *McKinney v. Carey*, 311 F.3d 1198, 1200 (9th Cir. 2002). This
7 defect in plaintiff's pleading cannot be cured by amendment and thus, plaintiff's motion to
8 amend, filed with his objections, is denied.

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304,
10 this court has conducted a de novo review of this case. Having carefully reviewed the entire file,
11 the court finds the findings and recommendations to be supported by the record and by proper
12 analysis.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations filed February 26, 2009, are adopted in
15 full;
16 2. Plaintiff's March 3 and March 17, 2009 motions to amend are denied; and
17 3. This action is dismissed without prejudice for failure to exhaust administrative
18 remedies.

19 Dated: April 3, 2009

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21 MORRISON C. ENGLAND, JR.
22 UNITED STATES DISTRICT JUDGE
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