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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES H. McGEE,

Plaintiff,

No. 2:13-cv-0173 KJN P

vs.

UNKNOWN,

Defendant.

ORDER and

FINDINGS AND RECOMMENDATIONS

_____ /

By order filed February 6, 2013, this court directed plaintiff to file a cognizable complaint or a request that this action be closed, because the court’s review of plaintiff’s initially filed “letter” indicated that plaintiff failed to exhaust his administrative remedies. (See Dkt. No. 3.) In response, plaintiff plainly states that he has not exhausted his administrative remedies, and requests that the court stay this action pending such exhaustion. (Dkt. No. 4.)

The Prison Litigation Reform Act requires that a prisoner exhaust his available administrative remedies before bringing a federal civil rights action. See 42 U.S.C. § 1997e(a); Brown v. Valoff, 422 F.3d 926, 934 (9th Cir. 2005); Griffin v. Arpaio, 557 F.3d 1117, 1119 (9th Cir. 2009). The district court must dismiss an action where it is clear from the face of the complaint that plaintiff failed to exhaust his administrative remedies prior to filing suit. 42 U.S.C. § 1997e(a); McKinney v. Carey, 311 F.3d 1198, 1199-1200 (9th Cir. 2002) (per curiam);

1 Wyatt v. Terhune, 315 F.3d 1108, 1120 (“A prisoner’s concession to nonexhaustion is a valid
2 grounds for dismissal. . . .”); see also Bennett v. King, 293 F.3d 1096, 1098 (9th Cir. 2002).

3 For these reasons, the court must dismiss the instant action. This result does not,
4 however, preclude plaintiff from filing a new action after he has exhausted his administrative
5 remedies.


6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff’s motion to stay this action (Dkt. No. 4), is denied; and
8 2. The Clerk of Court is directed to appoint a district judge to this action.

9 In addition, IT IS HEREBY RECOMMENDED that this action be dismissed
10 without prejudice.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
13 after being served with these findings and recommendations, plaintiff may file written objections
14 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
15 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
16 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
17 (9th Cir. 1991).

18 DATED: March 4, 2013

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

23 mcge0173.scrn.fail.exh
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