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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY C. BONTEMPS,
Plaintiff,
v.
C/O CALLISON,
Defendant.

No. 2:13-cv-0360 KJM AC P

ORDER

Plaintiff has filed three documents in response to the undersigned’s Findings and Recommendations filed February 12, 2015, which recommend dismissal of this action for failure to exhaust administrative remedies. See ECF No. 37. Plaintiff was accorded twenty-one days to file objections to the Findings and Recommendations. In response, plaintiff has filed a motion for a thirty-day extension of time to file and serve his objections, ECF No. 38; a motion to stay this action for thirty days, ECF No. 39; and a proposed First Amended Complaint (FAC), ECF No. 40, which mirrors the operative complaint, ECF No. 1. Despite these multiple filings, plaintiff asserts that he requires additional time to file objections because he is in administrative segregation without access to legal materials for the next thirty days.

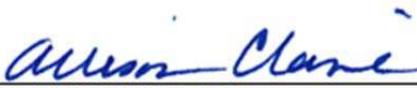
The undersigned previously found that this action “is one of those rare cases in which dismissal for non-exhaustion is appropriate under Rule 12(b)(6),” based on plaintiff’s concession on the face of his complaint that he did not exhaust available administrative remedies. See ECF

1 No. 37 at 4 (citing Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014)). The court rejected
2 plaintiff's contention that claims under the Americans with Disabilities Act (ADA) are exempt
3 from the requirement of administrative exhaustion. Moreover, the court clarified that plaintiff's
4 claims were not grounded in the ADA but in the First and Eighth Amendments to the United
5 States Constitution. ECF No. 37 at 4. Nevertheless, plaintiff again asserts in his proposed FAC
6 that his claims are premised on the ADA and exempt from administrative exhaustion. Plaintiff's
7 argument demonstrates the futility of further amendment and/or further time to file objections to
8 the court's Findings and Recommendations. The undersigned finds that further briefing in this
9 action would be futile, and therefore construes plaintiff's current filings as his objections to the
10 court's Findings and Recommendations.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's motion for an extension of time (ECF No. 38) is denied;
- 13 2. Plaintiff's motion to stay this action (ECF No. 39) is denied;
- 14 3. Plaintiff's proposed First Amended Complaint (ECF No. 40) is disregarded; and
- 15 4. Plaintiff's recent filings, ECF Nos. 38-40, are construed as plaintiff's objections to the
16 court's Findings and Recommendations filed February 12, 2015.

17 DATED: March 2, 2015

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19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
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