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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT COLEMAN,

 Plaintiff,

 v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

 Defendants.

No. 2:13-cv-1021 KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. On November 16, 2015, plaintiff filed a document entitled “Motion for Amendment to Conform to the Evidence Pursuant to Fed. R. Civ. P. 15(b).” (ECF No. 76.) Plaintiff claims that he filed a motion for reconsideration on August 4, 2015, and because no decision has yet been rendered, he seeks a motion for amendment to conform to the evidence. Plaintiff seeks to revisit his arguments concerning the exhaustion of administrative remedies. (ECF No. 76, *passim*.)

First, amendment of the complaint is not appropriate to address the issue of exhaustion of administrative remedies because exhaustion is an affirmative defense that is not required to be addressed in the complaint. But even if he properly sought leave to amend, his motion was not accompanied by a proposed amended complaint. As a prisoner, plaintiff’s pleadings are subject

1 to evaluation by this court pursuant to the in forma pauperis statute. See 28 U.S.C. § 1915A.
2 Because plaintiff did not submit a proposed amended complaint, the court is unable to evaluate it.

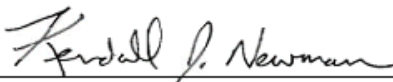
3 Second, the issue of exhaustion has been fully briefed. Plaintiff's motion for
4 reconsideration was construed as objections to the July 22, 2015 findings and recommendations,
5 which ruled on defendants' motion for summary judgment. Plaintiff filed an opposition to the
6 motion for summary judgment and defendants filed a reply. Local Rule 230(1). To the extent
7 plaintiff seeks to revisit or supplement arguments made in conjunction with the motion for
8 summary judgment, such belated efforts are not permitted. In addition, the findings and
9 recommendations provided for the filing of objections by plaintiff, and a reply by defendants. No
10 additional filings were permitted. (ECF No. 67.)

11 Finally, the issue of exhaustion of administrative remedies has now been decided. (ECF
12 No. 77.) If plaintiff seeks to further challenge the issue of exhaustion, he may do so on appeal
13 once final judgment in this matter is entered.

14 Accordingly, IT IS HEREBY ORDERED that plaintiff's November 16, 2015 motion
15 (ECF No. 76) is denied without prejudice.

16 Dated: December 18, 2015

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE
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