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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR ANDERSON,
Plaintiff,
v.
McINTRNY, et al.,
Defendants.

No. 2:14-cv-0011 MCE CKD P

ORDER

On May 19, 2015, this court granted defendant’s motion to dismiss the First Amended Complaint on the ground that plaintiff’s failure to exhaust administrative remedies was clear on the face of the complaint. (ECF No. 56.) However, the court granted plaintiff thirty days’ leave to file an amended complaint “that complies with the exhaustion requirement or explains why exhaustion was ‘effectively unavailable.’” (Id. at 3.)

On June 22, 2015, plaintiff filed a belated opposition to defendant’s motion to dismiss. (ECF No. 57.) On the same day, he filed a document titled “Amended and Supplement 832.5 Complaint to Original Complaint.” (ECF No. 58.) It alleges continuing wrongdoing by prison staff and does not address the issue of exhaustion. (Id.) Defendant has filed an opposition arguing that neither of these filings comply with the court’s May 19, 2015 order, as plaintiff has shown neither exhaustion nor good cause for failing to exhaust. (ECF No. 61.)

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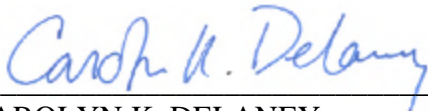
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The undersigned agrees that plaintiff has not filed an amended complaint that complies with its earlier order and thus will recommend dismissal of this action.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

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

Dated: August 24, 2015



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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