

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In Re.

No. C 12-2518 SI (pr)

JAMES ROJO,

**ORDER EXTENDING DEADLINES**Plaintiff.  
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This action was opened on May 16, 2012, when the court received from plaintiff a letter in which he complained about medical care at the prison at which he was incarcerated. In an effort to protect his rights, it was filed as a new action. Plaintiff was informed that he had not filed a complaint, and was given thirty days to do so. He also was sent a notice that he had not paid the filing fee or applied for leave to proceed *in forma pauperis*, and was given thirty days to either pay the fee or file the application. A copy of the court's form *in forma pauperis* application was provided with the notice, along with a return envelope.

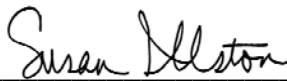
Plaintiff did not file a complaint or file an *in forma pauperis* application or pay the fee. Instead, he filed a letter in which he requested a stay of the action so that he could exhaust administrative remedies as to his claims. The reported need to exhaust administrative remedies does not warrant a stay because exhaustion of administrative remedies must be accomplished *before* the action is filed, not while it is pending. An action must be dismissed unless the prisoner exhausted his available administrative remedies *before* he or she filed suit, even if the prisoner fully exhausts while the suit is pending. *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002); *see Vaden v. Summerhill*, 449 F.3d 1047, 1051 (9th Cir. 2006) (where administrative

1 remedies are not exhausted before the prisoner sends his complaint to the court it will be  
2 dismissed even if exhaustion is completed by the time the complaint is actually filed). The  
3 request for a stay therefore is DENIED. (Docket # 4.)

4 In case plaintiff was waiting for a ruling on his request before complying with the notices  
5 he received from the court, the court will extend the deadlines for compliance with the notices.  
6 No later than **August 17, 2012**, plaintiff must file his complaint. Failure to file a complaint (or  
7 other pleading showing the court has jurisdiction) by the deadline will result in the dismissal of  
8 this action. Also no later than **August 17, 2012**, plaintiff must file a completed *in forma*  
9 *pauperis* application (including a certificate of funds in the inmate trust account for the last six  
10 months) or pay the \$350.00 filing fee. Failure to file a completed application or pay the fee by  
11 the deadline will result in the dismissal of this action. No further extensions of these deadlines  
12 should be expected.

13 IT IS SO ORDERED.

14 Dated: July 18, 2012

  
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SUSAN ILLSTON  
United States District Judge