

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 JEFF J. HANCOCK,

No. C 09-06082 CW (PR)

4 Plaintiff,

ORDER DENYING MOTION TO SET
ASIDE JUDGMENT OF DISMISSAL

5 v.

(Docket no. 18)

6 CHIEF OF CORRECTION EDWARD C.
7 FLORES, et al.,

8 Defendants.
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10 Plaintiff, a state prisoner, filed a pro se complaint under 42
11 U.S.C. § 1983, alleging that jail officials at the Santa Clara
12 County Jail were deliberately indifferent to his serious medical
13 needs. Thereafter, the Court dismissed the complaint with leave to
14 amend and instructed Plaintiff to correct various deficiencies,
15 including his apparent failure to exhaust all administrative
16 remedies. Docket no. 13.

17 Plaintiff then requested an extension of time to exhaust his
18 administrative remedies. On January 7, 2011, the Court dismissed
19 the complaint for the reason that, by requesting an extension of
20 time to exhaust his administrative remedies, Plaintiff was
21 conceding that administrative remedies were not exhausted at the
22 time he filed his complaint. Accordingly, the Court dismissed the
23 complaint without prejudice to Plaintiff's filing a new complaint
24 after exhausting his administrative remedies. See McKinney v.
25 Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be
26 dismissed without prejudice unless prisoner exhausted available
27 administrative remedies before he filed suit).

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1 Now pending is Plaintiff's motion to set aside the judgment of
2 dismissal to allow him to obtain subpoenas that will enable him to
3 file an amended complaint. Specifically, Plaintiff states that in
4 order to file an amended complaint he must discover the identities
5 of Does 1 and 2, whom Plaintiff identified in his complaint as a
6 correctional officer and Nurse who failed to provide him with
7 adequate medical care.

8 Plaintiff's motion is DENIED. The complaint was dismissed for
9 failure to exhaust administrative remedies. As Plaintiff has not
10 presented any reason why the Order dismissing the complaint on that
11 ground should be set aside, Plaintiff is not entitled to file an
12 amended complaint in this closed action.

13 This Order terminates Docket no. 18.

14 IT IS SO ORDERED.

15 Dated: 2/2/2012


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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