

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FEB 22 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT D. MIX,

Plaintiff-Appellant,

v.

LINDSAY CUNNINGHAM; WILLOW  
SALOUM, Dr.,

Defendants-Appellees.

No. 17-15199

D.C. No. 1:13-cv-00823-AWI-MJS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted February 13, 2018\*\*

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

Robert D. Mix, a civilly committed resident at Coalinga State Hospital, appeals pro se from a jury verdict in his 42 U.S.C. § 1983 action alleging a failure-to-protect claim. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

The district court did not abuse its discretion by denying Mix's motion to

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reopen discovery, his requests for various non-party hospital records, and his requests for police and Fresno County superior court records, because Mix failed to show denial of his requests resulted in substantial prejudice. *See Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1084, 1093 (9th Cir. 2003) (setting forth standard of review and noting that a district court's "decision to deny discovery will not be disturbed except upon the clearest showing that the denial of discovery results in actual and substantial prejudice to the complaining litigant." (citation and internal quotation marks omitted)).

The district court did not abuse its discretion by denying Mix's motion for a continuance to obtain counsel because the pertinent factors weighed in favor of denial of the continuance. *See United States v. 2.61 Acres of Land, More or Less, Situated in Mariposa Cty.*, 791 F.2d 666, 670-71 (9th Cir. 1986) (setting forth standard of review and factors to be considered in reviewing the denial of a requested continuance).

The district court did not abuse its discretion by excluding Walker and Mendoza as witnesses because they were not disclosed in accordance with the pretrial order. *See id.*; *Galdamez v. Potter*, 415 F.3d 1015, 1020 (9th Cir. 2005) (stating factors to be considered in evaluating a motion to amend a pretrial order).

As to Walker and Mendoza's written declarations, Mix did not preserve this issue for appeal because he withdrew his request to admit the declarations. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (we will not consider matters not properly raised before the district court)

We reject as without merit Mix's contention that the district court erred by not granting him an additional opportunity to amend his complaint after the district court's deadline for amending the complaint.

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Mix's request for judicial notice (Docket Entry No. 23) is denied.

**AFFIRMED.**