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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRETT ALEXANDER HALE,

Plaintiff,

vs.

1: 08 CV 0489 LJO WMW PC

ORDER RE MOTION (DOC 9)

FELIX IBGINOSA, et al.,

Defendants.

This is a civil rights action brought by Plaintiff against defendant correctional officials for inadequate medical care. Specifically, Plaintiff claims that his medical care is such that it violate the Eighth Amendment to the U.S. Constitution. Pending before the court is Plaintiff’s motion to consolidate this case with case number 1:06-CV-01497 LJO GSA PC.

In his motion to consolidate, Plaintiff concedes that this case, filed in state court and removed to this court, is similar to the earlier case. Plaintiff concedes that he filed this action in state court in an attempt at speedier resolution. Plaintiff indicates that the earlier case challenged the treatment of Plaintiff’s intestinal conditions. This case, in addition to the allegations included in the earlier case, includes allegations of treatment regarding a torn tendon in Plaintiff’s shoulder.

Because Plaintiff concedes that the claims regarding his intestinal condition are those

1 contained in the earlier complaint, the motion is denied as to those claims. Plaintiff seeks to
2 litigate both claims in the same action, as it is more convenient. Plaintiff may not change the
3 nature of this suit by adding new, unrelated claims in his amended complaint. George v. Smith,
4 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints). Plaintiff is advise that if the
5 claims regarding his tendon arose out of the same events, he should seek leave to amend his
6 complaint in the earlier action. If the claim arose out of a separate event or set of events, the
7 claims regarding his tendon are properly brought in this case. The court can not discern from the
8 complaint in this action specific dates that the events at issue occurred. Should Plaintiff
9 successfully amend his complaint in the earlier action, the court will recommend dismissal of this
10 action as duplicative of the earlier action. Otherwise, this action will proceed only as to the
11 claims regarding the treatment of Plaintiff’s tendon.

12 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion to consolidate this
13 action with case number 1:06-CV-1497 LJO GSA PC is denied. The Clerk’s Office is directed
14 to file a copy of this order in case number 1:06-CV-1497 LJO GSA PC.

15
16 IT IS SO ORDERED.

17 **Dated:** February 11, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE