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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN FREDERICK WHEELER,
Plaintiff,

v.

HEALTHY SMILES, et al.,
Defendants.

1:09-cv-01772-OWW-SKO

ORDER DENYING MOTION TO FILE
THIRD AMENDED COMPLAINT (Doc.
22)

I. INTRODUCTION.

Plaintiff is a *pro se* litigant asserting a civil rights claim under 42 U.S.C. § 1982. Specifically, Plaintiff alleges that his First Amendment rights were violated by state-contracted dentists who provided him with dentures that make it difficult for him to speak. Plaintiff also contends that the malformed dentures violate his due process rights.

On January 28, 2011, the court entered an order adopting the Magistrate Judge's Findings and Recommendations recommending that Plaintiff's action be dismissed with prejudice. (Doc. 19). Also on January 28, 2011, judgment was entered in favor of Defendants. (Doc. 20).

On February 22, 2011, Plaintiff filed objections to the Magistrate Judge's Findings and Recommendations, along with a

1 motion to file a third amended complaint. (Docs. 21, 22).
2 Plaintiff lodged a copy of the proposed third amended complaint
3 ("proposed TAC"). (Doc. 23).

4 **II. DISCUSSION.**

5 The Magistrate Judge's Findings and Recommendations advised
6 Plaintiff that his complaint failed to state a claim because it did
7 not allege state action. (Doc. 14 at 5) (citing *Franklin v. Fox*,
8 312 F.3d 423, 444-45 (9th Cir. 2002)). Assuming *arguendo* that
9 there is a justification for Plaintiff's belated motion to amend,
10 because the proposed TAC does not remedy the deficiencies
11 identified in the Findings and Recommendations, Plaintiff's motion
12 must be denied.

13 Plaintiff's proposed TAC alleges that because the dentist who
14 prepared his dentures did so pursuant to a contractual agreement
15 with the State of California, they were state actors for the
16 purposes of their conduct. (Proposed TAC at 2). The proposed TAC
17 is deficient because, *inter alia*, it does not allege sufficient
18 facts to establish any state action. A private party may be found
19 to be a state actor for the purposes of section 1983 liability only
20 if its conduct is "chargeable to the State." *Lugar v. Edmondson Oil*
21 *Co., Inc.*, 457 U.S. 922, 937, 102 S. Ct. 2744, 73 L. Ed. 2d 482
22 (1982). The Supreme Court has articulated the following four tests
23 for determining whether a private party's conduct constitutes state
24 action: (1) the state compulsion test, (2) the public function
25 test, (3) the joint action test, and (4) the governmental nexus
26 test. *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002). The sole
27 allegation Plaintiff advances in support of his argument that
28 Defendants were acting as "state actors" when they provided him

1 with dentures is that Defendants were under contract with the State
2 to provide such dental work. (Proposed TAC at 2). "Detailed
3 regulation of and substantial funding for private actors are not
4 sufficient to transform [a private] party's conduct into state
5 action" under any of the four theories identified by the Supreme
6 Court. See *Jensen v. Lane County*, 222 F.3d 570, 575 (9th Cir.
7 2000) (citation omitted). Rather, the State must be "so far
8 insinuated into a position of interdependence with the [private
9 party] that it was a joint participant in the enterprise." *Id.*
10 The proposed TAC does not contain sufficient allegations to raise
11 an inference that Defendants were state actors for purposes of a
12 section 1983 action. See *Franklin*, 312 F.3d at 445 (discussing
13 requirements of various theories for attributing private action to
14 a state).

15 **ORDER**

16 For reasons stated, Plaintiff's motion to amend (Doc. 22) is
17 DENIED.

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21 IT IS SO ORDERED.

22 **Dated: March 4, 2011**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE