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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ALVIN J. SCHROEDER,

CASE NO. 1:09-cv-02236-AWI-GBC PC

Plaintiff,

ORDER DENYING MOTION TO COMPEL  
DISCOVERY AND DENYING MOTION TO  
ADD CLAIMS PREVIOUSLY DISMISSED IN  
ANOTHER CASE

v.

(Doc. 14)

JAMES A. YATES, et al.,

Defendants.

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On December 28, 2009, Plaintiff Alvin J. Schroeder, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. On September 17, 2010, Plaintiff filed a motion for “joinder of parties.” However, the September 17, 2010 motion requests this court to compel discovery from the “San Diego Reference Laboratories” and to add claims which were dismissed in Case No. 1:09-cv-00883-DLB-PC on September 13, 2009.

This court has previously informed the Plaintiff, via the first informational order, that no discovery may be conducted without court permission until an answer is filed and the court issues the discovery order. As discovery has not opened in this case, Plaintiff’s request is premature and his motion is **HEREBY DENIED**.

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1 Plaintiff seeks to add a due process claim that was previously litigated in Schroeder v.  
2 Huckabay et al., 1:09-cv-00883-DLB PC. The trial court dismissed Schroeder v. Huckabay with  
3 prejudice on September 23, 2009, for failure to state a claim. Plaintiff believes that the dismissal  
4 of Schroeder v. Huckabay was in error. However, appeal is the proper redress for a claimed error  
5 in Schroeder v. Huckabay and Plaintiff is foreclosed from relitigating the same claim in this suit.  
6 See Valley Nat. Bank of Ariz. v. A.E. Rouse & Co., 121 F.3d 1332, 1335-36 (finding that collateral  
7 attack of the same issue in a subsequent suit was barred and appeal was the proper redress for alleged  
8 error); Gospel Missions of America v. City of Los Angeles, 328 F.3d 548, 553 (9th Cir. 2003)  
9 (stating requirements for issue preclusion to bar relitigation). Therefore, Plaintiff's request to add  
10 previously dismissed claims from Case No. 1:09-cv-00883-DLB PC is **HEREBY DENIED.**

11 IT IS SO ORDERED.

12 Dated: November 4, 2010

  
13 UNITED STATES MAGISTRATE JUDGE