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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICIA A. McCOLM,
Plaintiff,
v.
STATE OF CALIFORNIA, *et al.*,
Defendants.

No. 1:14-cv-00580-NONE-JDP
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DENY
PLAINTIFF’S MOTION SEEKING RELIEF
FROM, OR ALTERATIONS TO, THE
JUDGMENT
(Doc. Nos. 83, 85)

Plaintiff Patricia A. McColm is a former state prisoner proceeding *pro se* in this now-closed civil rights action brought under 42 U.S.C. § 1983. The matter was initially filed on April 22, 2014. (Doc. No. 1.) The court screened and dismissed plaintiff’s initial complaint with leave to amend on February 26, 2015. (Doc. No. 12.) After being granted several extensions of time to do so extending over a period of more than two years, plaintiff finally filed an 80-page first amended complaint (FAC) on March 13, 2017. (Doc. No. 42.)

In general, plaintiff complained in her FAC about treatment she allegedly endured while incarcerated at Central California Women’s Facility (CCWF) in Chowchilla, California. (*See* Doc. 47 at 2–5). Among other things, plaintiff alleged that she has mobility issues and requires a wheelchair due to multiple medical conditions from which she suffers including multiple sclerosis, which impacts her cognitive function. (Doc. No. 42 at 5.) Plaintiff alleged that officials at CCWF failed to accommodate her disability in violation of the Americans With Disabilities

1 Act (ADA), failed to protect her from “extreme physical and emotion[al] abuse” at the hands of
2 other inmates, and retaliated against her for her various complaints made about her treatment.
3 (*See* Doc. 47 at 2–5.) On August 14, 2017, the then assigned magistrate judge issued findings and
4 recommendations, reviewing the FAC in detail, and recommending that certain claims be
5 dismissed without leave to amend, but that plaintiff be afforded another opportunity to amend to
6 cure deficiencies noted with respect to other claims. (*See generally* Doc. 47.) The August 14,
7 2017 findings and recommendations provided detailed instructions about how plaintiff could
8 cure the numerous deficiencies of her FAC, including clear warnings that plaintiff must make
9 efforts to allege facts linking specific named defendants to the “bad things that happened to her,”
10 (*id.* at 6) as well as a warning that any amended complaint should be brief (*id.* at 18). After
11 receiving a significant extension of time to do so (Doc. No. 49), plaintiff filed objections to the
12 August 14, 2017 findings and recommendations. (Doc. No. 52.) On February 22, 2018, the
13 previously assigned district judge adopted those findings and recommendations, dismissing
14 certain of plaintiff’s claims with prejudice and other claims with leave to amend. (Doc. No. 53.)

15 After again obtaining several extensions of time (Doc. Nos. 58, 60), plaintiff filed a
16 second amended complaint (SAC). (Doc. No. 63.) Instead of abiding by the warnings previously
17 given to her, however, plaintiff’s 121-page SAC added back allegations that had previously been
18 dismissed, including 72 named defendants and 100 “Doe” defendants. (*See* Doc. No. 75 at 4–5.)
19 On June 12, 2019, the newly assigned magistrate judge issued findings and recommendations,
20 again reviewing the case history in detail, and recommending that: (a) plaintiff’s SAC be
21 dismissed for failure to comply with federal pleading standards; (b) plaintiff not be afforded
22 further leave to amend; and (c) the SAC be dismissed with prejudice. (Doc. No. 75.) Plaintiff
23 filed objections to the June 12, 2019 findings and recommendations. (Doc. No. 80.) After
24 considering the matter *de novo* in light of plaintiff’s objections, on September 11, 2019, the
25 previously assigned district judge adopted the findings and recommendations in full and
26 dismissed the case with prejudice based on plaintiff’s repeated failures to cure pleading
27 deficiencies and to comply with court orders. (Doc. No. 81.)

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1 On October 8, 2019, plaintiff filed the pending motion seeking relief from, or alterations
2 to, that judgment. (Doc. No. 83.) In her motion, which invokes Federal Rules of Civil Procedure
3 59(e) and 60(b), plaintiff asserts that her underlying claims are not deficient, that dismissal with
4 prejudice is inappropriate under the circumstances, including in light of her disability. (*Id.*)
5 Plaintiff has attached to her motion several letters from physicians including one, dated August
6 23, 2018, from a clinical professor of neurology who opines regarding the seriousness of the
7 cognitive issues caused by plaintiff's multiple sclerosis. (Doc. No. 86 at 5.) Among other
8 objections, plaintiff objects to dismissal of her complaint "without leave to amend merely because
9 of its length without analysis of any cause on the merits and without appointment of counsel
10 recommended by Plaintiff's physicians." (Doc. No. 83 at 5.) She also requests appointment of
11 counsel. (Doc. No. 83 at 3.)

12 On January 17, 2020, the magistrate judge entered findings and recommendations,
13 recommending that plaintiff's motion seeking relief from, or alterations to, the judgment
14 dismissing the case be denied. (Doc. No. 85.) Plaintiff was given an opportunity to object to the
15 findings and recommendations within fourteen days and objected on January 30, 2020. (Doc. No.
16 87.) In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this
17 court has conducted a de novo review of this case, including all of the medical records provided
18 by plaintiff. Having carefully reviewed the entire file, the court finds the January 17, 2020
19 findings and recommendations to be supported by the record and proper analysis.

20 Although plaintiff invokes both Federal Rules of Civil Procedure 59(e) and 60(b), she
21 may take advantage of the somewhat more lenient standard applicable under Rule 59 because she
22 filed her motion within 28 days of entry of judgment. *See* Fed. R. Civ. P. 59(e); (*compare* Doc.
23 No. 82 (filed Sep. 11, 2019), *with* Doc. No. 83 (filed Oct. 8, 2019)). Nonetheless, a motion for
24 such relief "should not be granted, absent highly unusual circumstances, unless the district court
25 is presented with newly discovered evidence, committed clear error, or if there is an intervening
26 change in the controlling law." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (*en*
27 *banc*) (internal quotation marks and citations omitted). Altering or amending a judgment under
28 Rule 59(e) is an "extraordinary remedy, to be used sparingly in the interests of finality and

1 conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890
2 (9th Cir. 2000). Plaintiff has identified no such unusual or extraordinary circumstances here. The
3 court is sympathetic to plaintiff’s medical condition. Nonetheless, the court cannot find that the
4 previously assigned district judge clearly erred by adopting the recommendation that her SAC be
5 dismissed with prejudice in light of the numerous warnings regarding the pleading of her claims
6 and the extensions of time plaintiff received to cure the noted deficiencies in her earlier
7 complaints. Moreover, the medical record most relevant to plaintiff’s pending motion – the
8 August 23, 2018 letter mentioned above – is not new, and cannot constitute newly discovered
9 evidence. Relatedly, although plaintiff renews her request for counsel in her October 8, 2019
10 motion, this issue has been addressed numerous times by this court, including by way of a June
11 11, 2019 order issued by the assigned magistrate judge. (Doc. No. 74.) While the August 23,
12 2018 doctor’s letter is relevant to the appointment of counsel issue insofar as it represents a
13 medical opinion that plaintiff “needs to have court appointed counsel to help prepare a more
14 logical, concise, and complete document according to the court’s instructions,” (Doc. No. 86 at
15 5), this opinion does not overcome the practical reality, which has been explained to plaintiff, that
16 the court cannot compel an attorney to represent her in this civil action. (*See* Doc. 74 at 2
17 (providing citations).) The assigned magistrate judge reasonably concluded that this case did not
18 warrant taking the extraordinary step of seeking *pro bono* counsel. (*Id.*)

19 Accordingly:

- 20 1. The findings and recommendations issued by the magistrate judge on January 17, 2020
21 (Doc. No. 85) are ADOPTED IN FULL; and
- 22 2. Plaintiff’s motion to alter the judgment, or obtain relief from it (Doc. No. 83), is denied.

23 IT IS SO ORDERED.

24 Dated: July 18, 2020

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27 UNITED STATES DISTRICT JUDGE
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