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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS CURTIS HISLE,

Plaintiff,

v.

MARLYN CONANON, et al.,

Defendants.

No. 1:17-cv-01400-NONE-SAB (PC)

ORDER DENYING PLAINTIFF’S MOTION
TO ALTER OR AMEND THE JUDGMENT

(Doc. No. 143.)

Plaintiff Dennis Curtis Hisle is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On March 2, 2020, defendant Dr. Conanan¹ moved for summary judgment on the ground that plaintiff had failed to exhaust his administrative remedies prior to filing suit as required. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On August 3, 2020, the assigned magistrate judge issued findings and recommendations addressing the motion for summary judgment. (Doc. No. 121.) The findings and recommendations summarized plaintiff’s claims as follows, with the final paragraph being particularly pertinent to resolution of the pending motion:

Plaintiff repeatedly informed Dr. Conanan that he was suffering excruciating pain and could not breathe. Dr. Conanan performed an x-ray and discovered that Plaintiff had three broken ribs and internal bleeding that was not previously detected by staff at Community Regional Medical Center (“CRMC”). Despite the x-ray results, Plaintiff was ordered to return to his cell. However, two to three days later, Plaintiff was rushed to the hospital.

¹ Defendant’s filings indicate that while the docket currently spells defendant’s name as “Marlyn Conanon,” the correct spelling is “Marlyn Conanan.” (*See, e.g.*, Doc. Nos. 107, 145.) The court directs the Clerk of the Court to update the docket to reflect the correct spelling.

1 On or about May 21, 2016, Plaintiff was taken by ambulance to
2 Mercy Hospital in Bakersfield for treatment of three broken ribs,
3 internal bleeding, and removal of a developing extra pleural
4 hematoma. Dr. Mushtaq Ahmed kept Plaintiff chained to a bed
5 with continuous internal bleeding, strained breathing and in great
6 pain for two weeks because there was no bed space to be
7 transferred to Memorial Hospital. When Plaintiff eventually
8 arrived at Memorial Hospital, a surgical procedure was attempted
9 by use of a large needle to extract the blood which if it had been
10 done sooner would have worked. However, due to the length of
11 delay in treatment removal required a much more serious surgical
12 procedure. Dr. Ahmed would visit Plaintiff's room and state "he
13 doesn't know what to do with me, and he actually suggest[ed]
14 sending me back to (CDCR) PVSP because of the wait."

15 Dr. Conanen falsely stated that she ordered a medical lay-in to
16 modify Plaintiff's movement so he could hea[l] from his broken
17 ribs and internal bleeding. Dr. Conanen also falsely stated that she
18 issued an urgent referral for Plaintiff to see a pulmonologist.

19 (*Id.* at 5.)

20 The findings and recommendations also concluded that plaintiff's initial, fully-exhausted
21 inmate grievance, filed in 2016, "did not include allegations that Defendant Conanen falsified
22 medical records, failed to provide Plaintiff with a lay in, and failed to urgently refer Plaintiff to a
23 pulmonologist."² (*Id.* at 9.) Additionally, the magistrate judge found that plaintiff failed to put
24 prison officials on notice of his allegation that defendant Conanen falsified medical records in
25 light of the finding at the third level of review that plaintiff "failed to state facts, specify an act, or
26 provide documents consistent with the allegation." (*Id.* at 11.) Regardless, even if plaintiff
27 adequately put prison officials on notice of this allegation, plaintiff failed to exhaust his
28 administrative remedies before he initiated this lawsuit and thus, the magistrate judge did not err
in concluding that plaintiff had not administratively exhausted his claim that defendant Conanen
falsified his medical records. (*Id.* (stating the third level decision was issued in February 2018).)

Plaintiff did not dispute his failure to exhaust prior to filing suit on the merits, but instead
argued that Defendant Conanen should be estopped from asserting the lack of administrative
exhaustion due to fraud and misrepresentation. (*See* Doc. No. 115 at 2.) The magistrate judge
explained that, in theory, the defense of administrative exhaustion can be rendered "effectively

² While a later inmate grievance, initiated by plaintiff in 2020, did mention these issues,
administrative review of that grievance had yet to be completed. (*Id.* at 7.)

1 unavailable” if a prison administrator thwarts an inmate from taking advantage of the inmate
2 grievance process through “machination, misrepresentation, or intimidation.” (Doc. No. 121 at
3 10.) However, the magistrate judge concluded that plaintiff had not demonstrated that fraud or
4 misrepresentation had prevented him from using and completing the proper administrative
5 procedures to pursue his inmate grievance. (*Id.* at 10–11.)

6 On November 6, 2020, the undersigned adopted the magistrate judge’s findings and
7 recommendations, granted defendant’s motion for summary judgment, and dismissed plaintiff’s
8 claims against defendant Conan for allegedly falsifying medical records, failing to provide
9 plaintiff with a lay in, and failing to urgently refer plaintiff to a pulmonologist, without prejudice,
10 due to plaintiff’s failure to exhaust his administrative remedies with respect to those claims prior
11 to filing suit as required. (Doc. No. 136.)

12 On December 3, 2020, plaintiff filed a motion to amend or alter the court’s November 6,
13 2020 order, requesting that the court alter or amend how the ruling treated his allegations that
14 defendant Conan made false statements in his medical records. Defendant Conan filed an
15 opposition on December 22, 2020, contending that plaintiff essentially seeks reconsideration of
16 this court’s order granting her motion for summary judgment by repeating arguments previously
17 made and rejected by the court. (Doc. No. 145.)

18 Federal Rule of Civil Procedure 59(e) “permits a district court to reconsider and amend a
19 previous order.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). A motion to alter or
20 amend the judgment must “be filed no later than 28 days after the entry of the judgment.” Fed. R.
21 Civ. P. 59(e). Rule 59 “offers an extraordinary remedy, to be used sparingly in the interests of
22 finality and conservation of judicial resources.” *Carroll*, 342 F.3d at 945 (citation and internal
23 quotation marks omitted). “Indeed, a motion for reconsideration should not be granted, absent
24 highly unusual circumstances, unless the district court is presented with newly discovered
25 evidence, committed clear error, or if there is an intervening change in the controlling law.” *Id.*
26 (citation and internal quotation marks omitted). Additionally, Local Rule 230(j) requires that,
27 when a party makes a motion for reconsideration, the party must show “what new or different
28 facts or circumstances are claimed to exist or were not shown upon such prior motion, or what

1 other grounds exist for the motion” and “why the facts and circumstances were not shown at the
2 time of the prior motion.”

3 Plaintiff’s argument in support of his motion to alter or amend the judgment is somewhat
4 difficult to understand. He asks the court to “alter or amend the[] ruling to include plaintiff’s
5 argument of [C]onan[a]n[’]s statement and PCP note providing lay in as a fraudulent fact, not
6 adjudicated along with the granting of failure to exhaust lay in.” (Doc. No. 143 at 4.)
7 Specifically, plaintiff argues that the court “should have never ruled in a manner that included
8 adjudication of the unexhausted allegation of fraud. That allegation is only [an] argument in
9 support of evidence [as to] why a lay in order was not provided, not a filed claim.” (*Id.* at 4.)
10 First, it is unclear what “adjudication” plaintiff is concerned about. As the findings and
11 recommendations summarized, *plaintiff’s claims* included an allegation that Dr. Conanan made
12 false statements in plaintiff’s medical records regarding whether she ordered a medical lay-in and
13 whether she issued an urgent referral for plaintiff to see a pulmonologist.³ (*See* Doc. No. 121 at
14 5.) Notwithstanding the fact that this summary accurately reflected the allegations of the
15 operative complaint, it was not an “adjudication” of anything. Whether plaintiff’s allegation that
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17 ³ The magistrate judge’s summary of plaintiff’s allegations was accurate. In his second amended
18 complaint plaintiff alleges:

19 On June 17, 2019, Defendant Marylyn Conanon filed a motion for
20 summary judgment against Plaintiff Hisle. Defendant Conanon cited
21 in support of her motion, that she ordered a medical lay-in to modify
22 Plaintiff’s movement so he could heal from his broken ribs and
23 internal bleeding. This was a false statement of fact forged in her
24 progress notes as well as her statement she refered [sic] plaintiff an
25 urgent request to see pulminologist [sic]. This false support claim by
26 Dr. Conanon, to support her summary judgment motion, gave rise for
27 Plaintiff Hisle, to defend the truth in the opposition reply, and amend
28 his claim to include the material facts that defendant Conanon, forged
that false entry into her progress notes to gain legal advantage.
Plaintiff Hisle, “did not” receive a lay-in or program modification as
falsely claimed by defendant Conanon. And this failure caused
further significant injury to Plaintiff. Dr. Conanon, in her motion
testified that she knew Plaintiff required that prescription for rest and
used that falsity in her defence [sic]. This was cruel [and] unusual
punishment and deliberate indifference to a serious medical need.

(Doc. No. 114 at 5.)

1 defendant Conanon made false statements is viewed as an independent claim or as part of a
2 broader allegation that a lay-in was not provided, the outcome would be the same. The only
3 administratively exhausted inmate grievance failed to put defendants on notice of any such
4 claim(s). Therefore, dismissal *without prejudice* was ordered, meaning that plaintiff may attempt
5 to advance claims based upon false statements once those claims have been exhausted.

6 It is possible that plaintiff’s concern over an “adjudication” is a reference to the discussion
7 in the findings and recommendations of whether fraud operated to estop defendant Conanon from
8 asserting the defense of exhaustion. If that is plaintiff’s concern, his request is without merit.
9 The estoppel by fraud argument was an issue plaintiff himself raised in opposition to defendant
10 Conanon’s motion for summary judgment. (*See* Doc. 115 at 2.) The findings and
11 recommendations properly addressed that argument prior to granting defendant Conanon’s
12 motion for summary judgment. However, that discussion of fraud was limited to the issue of
13 whether prison officials thwarted plaintiff from taking advantage of the inmate grievance process
14 through fraud or misrepresentation. (Doc. No. 121 at 10–11 (“Plaintiff’s allegations are belied by
15 the evidence in the record. Plaintiff has pursued one grievance against Defendant Conan[a]n
16 through the third level of review and has another grievance currently under review. This
17 demonstrates that the grievance process remained available to him and did not prevent Plaintiff’s
18 use of the proper procedures.”).) That reasoning (and the undersigned’s adoption of it) was not
19 intended to directly address or reject plaintiff’s allegation on the merits (i.e., the allegation that
20 Defendant Conanon falsified plaintiff’s prison medical records).

21 Based on the above, the court finds no justification for altering or amending its November
22 30, 2020 order. Accordingly, it is hereby ordered that:

23 1. The Clerk of the Court is directed to update the docket to change the spelling of
24 “Marlyn Conanon” to “Marlyn Conanon” to reflect the correct spelling of Defendant’s name; and

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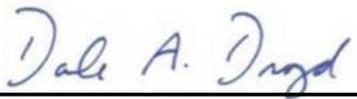
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2. Plaintiff's motion to alter or amend the judgment, filed on December 3, 2020 (Doc. No. 143), is denied.

IT IS SO ORDERED.

Dated: April 1, 2021


UNITED STATES DISTRICT JUDGE