

1 vision. See ECF Nos. 18, 36, 53. Service of process by the United States Marshal remains
2 outstanding for defendants Crosson and Ditomas.²

3 Due to plaintiff's visual impairments and his continuing difficulties in pursuing this
4 action, the court granted plaintiff's ninth request for appointment of counsel on June 8, 2015. See
5 ECF No. 46. However, this court's Alternative Dispute Resolution/Pro Bono Coordinator was
6 unable to locate an attorney willing to voluntarily represent plaintiff. Therefore, by order filed
7 May 19, 2016, the court informed plaintiff that he would need to represent himself. See ECF No.
8 51. The court obtained the assistance of the Office of the California Attorney General to identify
9 and locate the unserved defendants. See ECF Nos. 51-3.

10 Pursuant to his instant request for accommodations, plaintiff states that when he was
11 previously incarcerated at the California Medical Facility (CMF), he was able to use "a computer
12 that reads all documents, take notes and receives dictations." ECF No. 55-1 at 1. Plaintiff states
13 that he has exhausted his request for the same or similar accommodations at CHCF, without
14 obtaining a satisfactory resolution. He has attached copies of several accommodation requests
15 and two administrative appeals.³ These materials indicate that plaintiff has not exhausted his

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17 ² Only defendant Sabin has been served and appeared in this action; he is represented by private
18 counsel.

19 ³ These accommodation requests and administrative appeals reflect the following:

20 1824 (ADA) Log No. CHCF-D-15-02148: CHCF's "Reasonable
21 Accommodation Panel" (RAP) informed plaintiff on September 2,
22 2015, that "[i]n accordance with the Armstrong Remedial Plan
23 (ARP), CHCF staff are meeting the requirements . . . [because you
24 can] utilize the ADA clerk inmate workers . . . in the law library
25 [and] two Optilex machines which can read books and other written
26 documents to you, you may wear headphones in order to maintain
27 confidentiality." ECF No. 55-1 at 6. Plaintiff was informed that
28 he could file a CDCR 602 if he disagreed. Id.

602 Appeal Log No. CHCF-D-15-01971: Plaintiff complained in
part that "the vision impaired machine in the library does not take
notes or write or take dictation. . . ." ECF No. 55-1 at 10. The
appeal, which noted plaintiff's TABE score at 1.7, was partially
granted on Second Level Review, on October 21, 2015, on the
ground that plaintiff could access one of the two "Optelec devices"
during his assigned library hours, "which magnifies and reads text
in audible format." Id. at 8. However, plaintiff was informed that
"CHCF does not have a machine that can transcribe or dictate audio

(continued...)

1 administrative remedies through Third Level Review, which is a prerequisite to asserting a new
2 claim in this (or another) action under the Americans with Disabilities Act.⁴ Nevertheless, these
3 materials also appear to indicate that plaintiff has no further practical recourse for obtaining
4 technical or personal assistance in researching and preparing his legal materials, particularly in
5 obtaining access to a technical program that both “reads” and “writes.”

6 Due to the special circumstances in this case, the court will request that the Office of the
7 California Attorney General inquire of the CHCF Litigation Coordinator and/or Law Librarian
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9 verbiage. CHCF is meeting the requirements set by Armstrong
10 Remedial Plan.” Id. In response to plaintiff’s request that other
11 inmates or staff be permitted to read plaintiff’s confidential
12 documents, or make writings or take dictations thereon, the CHCF
13 Warden informed plaintiff that such activities were not permitted
14 under Cal. Code Regs. tit. 15, § 3450(d) (“No inmate or parolee
15 shall prepare, handle, or destroy any portion of a departmental
16 record containing confidential information as that term is defined in
17 section 3321.”). Id.

18 1824 (ADA) Log No. CHCF-D-15-03117: CHCF’s RAP informed
19 plaintiff on November 30, 2015, that the Librarian would assist him
20 in writing letters to the court informing court staff of plaintiff’s
21 disabilities. ECF No. 55-1 at 14-6.

22 1824 (ADA) Log No. CHCF-D-15-02714: CHCF’s RAP informed
23 plaintiff on December 8, 2015, that, inter alia, his request for
24 additional time in the library was approved with modification. ECF
25 No. 55-1 at 13.

26 602 Appeal Log No. CHCF-D-15-03540: This appeal was
27 screening out as duplicative of 602 Appeal Log No. CHCF-D-15-
28 01971. ECF No. 55-1 at 11-2.

1824 (ADA) Log No. CHCF-D-16-01699: CHCF’s RAP informed
plaintiff on June 29, 2016, that his requests for a computer with a
full screen reader program along with a windows and office
program, was disapproved as duplicative.

⁴ The Prison Litigation Reform Act of 1995 (PLRA) mandates that an inmate exhaust ‘such administrative remedies as are available’ before bringing suit to challenge prison conditions.” Ross v. Blake, 136 S. Ct. 1850, 1854-55 (June 6, 2016) (quoting 42 U.S.C. § 1997e(a)).

Plaintiff is informed that new claims based on actions that took place *after* the original complaint was filed, are not barred under McKinney v. Carey, 311 F.3d 1198 (9th Cir. 2002) (per curiam), so long as plaintiff exhausted them prior to including them in the operative amended complaint. See Rhodes v. Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010); see also Akhtar v. J. Mesa, 698 F.3d 1202, 1210 (9th Cir. 2012).

1 about the ways in which plaintiff is currently supported in pursuing this action, and whether there
2 are any additional means to support him, e.g., by providing additional personal assistance and/or
3 additional technical support (for example, a computer program that provides both text-to-speech,
4 and speech-to-text, options, borrowed or leased from another CDCR facility (e.g., CMF) or
5 another state entity (e.g., California Department of Rehabilitation)).

6 Accordingly, IT IS HEREBY ORDERED that:


7 1. The Office of the California Attorney General is requested to:

8 a. Contact the Litigation Coordinator and/or Law Librarian at the California
9 Health Care Facility to determine the ways in which plaintiff is currently supported in his
10 pursuit of this action, and to specifically identify all potential additional means and
11 methods for constructively supporting plaintiff through the conclusion of this action; and

12 b. Within 30 days after the filing date of this order, file and serve a statement
13 reflecting the findings of such inquiry, including all appropriate declarations.

14 2. The Clerk of Court is directed to serve a copy of this order on Ms. Monica Anderson,
15 Supervising Deputy Attorney General.

16 DATED: September 7, 2016

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18 ALLISON CLAIRE
19 UNITED STATES MAGISTRATE JUDGE
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