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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN GRESCHNER,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:15-cv-1663 MCE AC P

ORDER

Plaintiff is a prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983.

I. Procedural History

This case proceeds on plaintiff's first amended complaint. ECF No. 15. On screening, the undersigned found that plaintiff had stated a claim for deliberate indifference against defendant Rohlfig and state law medical negligence claims against defendants Banner Lassen Medical Center (Banner Lassen), Syverson, and Schwartz. ECF No. 18.

After service of the complaint, Rohlfig and Schwartz answered the complaint (ECF Nos. 27, 65), while Banner Lassen and Syverson moved to dismiss the complaint as untimely (ECF Nos. 30, 42). Banner Lassen and Syverson subsequently withdrew their motions to dismiss and

1 answered the complaint.¹ ECF Nos. 55, 56, 61, 62. Defendants Banner Lassen, Syverson, and
2 Schwartz then filed motions for summary judgment. ECF Nos. 63, 73, 78. Plaintiff has opposed
3 the motions and requested the court order full discovery. ECF Nos. 68, 71, 72, 74, 79. Plaintiff
4 has also filed a motion to amend the complaint (ECF No. 64) which defendants Banner Lassen
5 and Schwartz oppose (ECF Nos. 66, 67).

6 II. Motion to Amend

7 Plaintiff's motion to amend states that he seeks to name Banner Health as a defendant and
8 to add a fraud claim against Banner Lassen, Syverson, and Schwartz.² Defendant Banner Lassen
9 has opposed the motion on the grounds that there is no practical distinction between Banner
10 Lassen and Banner Health, since Banner Health own, operates, and does business as Banner
11 Lassen. Banner Lassen also argues that plaintiff cannot state a claim for fraud. ECF No. 66.
12 Defendant Schwartz joined in the opposition. ECF No. 67.

13 The motion to amend is not accompanied by a proposed amended complaint, as required
14 by Local Rule 137(c), and will therefore be denied. In the event plaintiff chooses to file another
15 motion to amend, any such motion must be accompanied by a copy of the proposed amended
16 complaint. Plaintiff is advised that in order to state a claim for fraud, he must allege facts
17 demonstrating that there was

18 (1) a false representation, actual or implied, or the concealment of a
19 matter of fact, material to the transaction, made falsely; (2)
20 knowledge of the falsity, or statements made with such disregard
21 and recklessness that knowledge is inferred; (3) intent to induce
another into relying on the representation; (4) reliance by one who
has a right to rely; and (5) resulting damage.

22 Pearson v. Norton, 230 Cal. App. 2d 1, 7 (Cal. Ct. App. 1964) (citation omitted). All elements
23 must be present for a claim to be successful. Id. at 7-8.

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25 ¹ Both defendants' withdrawals were contained in the replies to their motions to dismiss and
26 were not properly docketed to reflect the withdrawal. ECF Nos. 55, 56. The Clerk of the Court
will be directed to update the docket accordingly.

27 ² The motion also states that plaintiff seeks to add claims of medical negligence and malpractice
28 (ECF No. 64 at 3), but this case is already proceeding on a medical negligence claim against
defendants Banner Lassen, Syverson, and Schwartz (ECF No. 18 at 6-7).

1 WITHDRAWN.

2 2. Plaintiff's motion to amend (ECF No. 64) is DENIED without prejudice to a motion in
3 the proper form.

4 3. Plaintiff's motion for discovery (ECF No. 72) is GRANTED to the extent the court
5 will set a schedule for discovery by separate order and is otherwise DENIED.

6 4. Defendants' motions for summary judgment (ECF Nos. 63, 73, 78) are DENIED
7 without prejudice to renewal after the completion of discovery.

8 DATED: October 31, 2023

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10 ALLISON CLAIRE
11 UNITED STATES MAGISTRATE JUDGE
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