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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

J.L. HOWZE,  
  
Plaintiff,  
  
v.  
  
A.B. OROZCO, et al.,  
  
Defendants.

No. 2:16-cv-1738 JAM AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983, has filed a motion to amend the first amended complaint. ECF No. 71. Defendants oppose plaintiff’s motion. ECF Nos. 75, 76.

I. Background

Plaintiff initiated this action on July 25, 2016, ECF No. 1, and filed the operative first amended complaint (FAC) on May 23, 2017. ECF No. 11. Plaintiff’s FAC alleged that defendants Orozco, Grout, Neuschmid, and Sahota are liable under the Eighth Amendment for deliberate indifference to plaintiff’s serious medical needs. Plaintiff further alleged violations of the ADA and the Due Process Clause of the Fourteenth Amendment, and also brought a state tort claim for fraud.

Plaintiff stated in his FAC that he suffers from benign prostatic hyperplasia. ECF No. 11 at 7-8. He explained that his symptoms include an “(i) inability to await restroom access; (ii)

1 High Frequency urination; and (iii) blood loss/vessel rupture . . . concomitant with bladder  
2 distention.” Id. at 10 (alteration in original and internal quotation marks omitted). Plaintiff  
3 provided two Comprehensive Accommodation Chronos, one-page documents filled out by a  
4 physician detailing what accommodations, if any, are required due to a prisoner’s medical  
5 conditions. Id. at 5-6, 22-23. In the first Chrono, dated June 13, 2014, the physician wrote that  
6 plaintiff required a single-cell placement on a permanent basis. Id. at 22. In the second Chrono,  
7 dated June 25, 2014, another physician also determined that plaintiff needed a single cell, but  
8 marked the “temporary” box rather than permanent, noting that the need should be reassessed in  
9 twelve months. Id. at 23.

10 Plaintiff provided further documentation detailing the Institutional Classification  
11 Committee (ICC) hearing that took place on October 30, 2014, at which he claims that he was  
12 denied single cell status in complete disregard of the Chronos. Id. at 4-6, 28. The report stated  
13 that defendant Sahota was present during the hearing and noted plaintiff’s medical concerns, but  
14 stated that a single cell was not necessary or recommended by medical staff. Id. at 28. Plaintiff  
15 alleged that Sahota was pressured into disregarding the Chronos and that, immediately prior to  
16 this hearing, he overheard defendant-committee members Grout, Orozco, and Neuschmid  
17 coaching defendant Sahota to factor medical concerns out of the decision-making process. Id. at  
18 4, 6.

19 Plaintiff alleged that as a result of his placement in a double cell, he experiences daily  
20 episodes of distended bladder, vessel rupture, and agonizing pain, resulting in permanent damage  
21 to his bladder. Id. at 11. He also stated that he suffered an inguinal hernia in August 2016 as a  
22 result of straining-related trauma. Id. Plaintiff asked the court for injunctive relief in the form of  
23 single-cell status, as well as compensatory, exemplary, and special damages. Id. at 17.

24 On September 17, 2018, the court screened plaintiff’s FAC and determined that plaintiff’s  
25 deliberate indifference, conspiracy, and ADA claims against defendants Orozco, Grout,  
26 Neuschmid, and Sahota could proceed, and defendants were required to respond to that part of the  
27 complaint. ECF No. 14 at 10. The court determined that plaintiff’s fraud and due process claims  
28 did not state claims for relief and recommended they be dismissed without leave to amend. Id. at

1 11. The district judge adopted the recommendations on December 11, 2018. ECF No. 23.

2 On January 30, 2019, defendants filed a motion to dismiss arguing that the court should  
3 dismiss plaintiff's ADA and Eighth Amendment claims and further arguing that plaintiff's ADA  
4 claim for injunctive relief is moot against officials at Folsom State Prison because he was  
5 transferred to a different prison. ECF No. 24-1 at 3-7. On September 26, 2019, the undersigned  
6 recommended that defendants' motion be granted as to plaintiff's claim for injunctive relief and  
7 denied in all other aspects. ECF No. 36. The district judge adopted the recommendation. ECF  
8 No. 45.

9 On February 24, 2020, the court issued a discovery and scheduling order. ECF No. 47.  
10 Over six months later, on September 8, 2020, plaintiff filed the instant motion to amend his  
11 complaint along with a proposed second amended complaint. The proposed SAC is largely  
12 identical to the FAC, except it adds a claim that defendants Orozco and Grout violated plaintiff's  
13 rights under the ADA at a classification hearing on July 24, 2014 by not allowing a clinician to be  
14 present. ECF No. 72 at 13-14. Defendants oppose plaintiff's motion, arguing that because  
15 discovery is nearly complete, allowing expansion of the scope of the action would prejudice  
16 defendants and delay the resolution of this case. ECF No. 75 at 1.

## 17 II. Standards Governing Amendment

18 Pursuant to Rule 15, "leave to amend should be granted unless amendment would cause  
19 prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." Johnson  
20 v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citing DCD Programs, Ltd. v.  
21 Leighton, 833 F.2d 180, 185-87 (9th Cir. 1987)). "Late amendments to assert new theories are  
22 not reviewed favorably when the facts and the theory have been known to the party seeking  
23 amendment since the inception of the cause of action." In re W. States Wholesale Natural Gas  
24 Antitrust Litig., 715 F.3d 716, 739 (9th Cir. 2013), aff'd sub nom. Oneok, Inc. v. Learjet, Inc.,  
25 135 S. Ct. 1591 (2015) (citation omitted).

## 26 III. Discussion

27 The court finds that plaintiff had knowledge of the facts relevant to his only new theory at  
28 the time he initiated this action. Plaintiff's sole proposed addition to the complaint is the claim

1 that defendants are liable under the ADA because a clinician was not present at a July 24, 2014  
2 classification hearing. ECF No. 72 at 13-14. Plaintiff acknowledged that the “record reflects”  
3 these facts, and they have previously “been alleged.” Id. at 14. Moreover, plaintiff attached to  
4 his FAC a declaration referencing the July 2014 hearing and expressing how he felt this hearing  
5 was not conducted fairly. ECF No. 11 at 42. Accordingly, it cannot be disputed that plaintiff was  
6 aware of the facts underlying this claim at the time he commenced the action.

7 Plaintiff cannot, now, four years after initiating the action, and after discovery is nearly  
8 complete, amend his complaint to assert a cause of action from an event in 2014. See Roberts v.  
9 Arizona Bd. of Regents, 661 F.2d 796, 798 (9th Cir. 1981) (affirming district court where request  
10 to amend complaint was raised at the eleventh hour, after discovery was virtually complete). By  
11 not previously bringing this cause of action, plaintiff has unduly delayed seeking amendment.  
12 Furthermore, the court finds that amendment at this late stage would unfairly prejudice  
13 defendants, by requiring them to prepare another answer and reengage in discovery about an issue  
14 outside the scope of the discovery previously accomplished or contemplated. Moreover, the need  
15 to conduct additional discovery would delay the progress of this 2016 case toward dispositive  
16 motions.

17 Accordingly, the undersigned recommends plaintiff’s motion to amend the first amended  
18 complaint (ECF No. 71), be denied and the proposed amended complaint be stricken.

19 Accordingly, IT IS HEREBY RECOMMENDED that:

- 20 1. Plaintiff’s Motion to Amend the First Amended Complaint (ECF No. 71) be  
21 DENIED; and
- 22 2. The Clerk of the Court be directed to strike plaintiff’s proposed Second Amended  
23 Complaint (ECF No. 72) from the record.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
26 after being served with these findings and recommendations, any party may file written  
27 objections with the court and serve a copy on all parties. Such a document should be captioned  
28 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the

1 objections shall be served and filed within fourteen days after service of the objections. The  
2 parties are advised that failure to file objections within the specified time may waive the right to  
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 DATE: November 19, 2020

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6 ALLISON CLAIRE  
7 UNITED STATES MAGISTRATE JUDGE  
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