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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MANFRED SHOCKNER,

 Plaintiff,

 v.

SOLTANIAN, et al.,

 Defendants.

No. 2:18-cv-01948-TLN-KJN

ORDER

Plaintiff, a state prisoner proceeding *pro se*, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. 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 March 18, 2022, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 125.) Plaintiff has filed objections to the findings and recommendations. (ECF No. 129.)

The magistrate judge recommended that Defendants’ motion to dismiss Plaintiff’s claim that Defendant Smith approved Defendant Soltanian-Zadeh’s decision to discontinue Plaintiff’s methadone as barred by the statute of limitations be granted. The magistrate judge recommended that the related claim against Defendant Solanian-Zadeh be dismissed as barred by the statute of limitations, as Defendant Soltanian-Zadeh joined the motion to dismiss.

1 In his objections, Plaintiff raises a new claim for equitable tolling. Plaintiff alleges that he
2 “has been physically unable to process the case as he was hospitalized for right hip surgery and
3 subsequent rehabilitation at COR OHU, for a period of over six and possibly up to nine months.”
4 (ECF No. 129 at 5.)

5 The Court has discretion to consider new arguments raised in objections to findings and
6 recommendations. *Brown v. Roe*, 279 F.3d 742, 745-46 (9th Cir. 2002). For the following
7 reasons, the Court declines to consider Plaintiff’s new argument for equitable tolling raised in his
8 objections. While Plaintiff is a pro se litigant, Plaintiff knew of the grounds for the new argument
9 for equitable tolling when he filed his opposition to the pending motion. Plaintiff’s new argument
10 was not based on a “novel claim under a relatively new statute.” *Brown*, 279 F.3d at 745.

11 Even if the Court considered Plaintiff’s new argument raised in his objections, the Court
12 would find that Plaintiff did not allege sufficient facts supporting a colorable claim for equitable
13 tolling. *See Fink v. Shedler*, 192 F.3d 911, 916 (9th Cir. 1999). While Plaintiff alleges in his
14 objections that he could not “process” this case for six to nine months due to hip surgery, Plaintiff
15 does not allege when this hip surgery occurred. Without this information, the Court cannot find
16 that Plaintiff made a colorable claim for equitable tolling based on hip surgery.

17 Moreover, as discussed in the findings and recommendations, Plaintiff had two years from
18 March 13, 2014, to file a timely complaint. (ECF No. 125 at 9.) Plaintiff filed this action on June
19 28, 2018. (*Id.*) Plaintiff’s alleged nine month recovery from hip surgery would not explain the
20 over two year delay in the filing of this action.

21 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
22 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
23 Court finds the findings and recommendations to be supported by the record and by proper
24 analysis.

25 Accordingly, IT IS HEREBY ORDERED that:

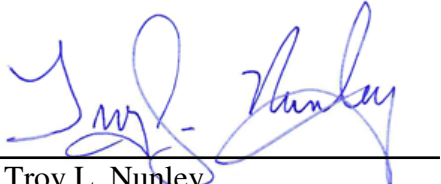
- 26 1. The Findings and Recommendations filed March 18, 2022, (ECF No. 125), are adopted
27 in full; and
- 28 2. Defendants’ Motion for Judgment on the Pleadings (ECF No. 106) is GRANTED;

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3. Plaintiff's claim alleging that Defendant Smith approved Defendant Soltanian-Zadeh's decision to discontinue Plaintiff's methadone is DISMISSED;

4. Plaintiff's claim alleging that Defendant Soltanian-Zadeh discontinued Plaintiff's methadone is DISMISSED.

DATE: June 15, 2022



Troy L. Nunley
United States District Judge