

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NOV 1 2017

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

WILLIAM FLETCHER,

Plaintiff-Appellant,

v.

CORIZON HEALTH SERVICES, and  
employees; et al.,

Defendants-Appellees.

No. 16-36073

D.C. No. 1:14-cv-00532-BLW

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Idaho  
B. Lynn Winmill, Chief Judge, Presiding

Submitted October 23, 2017\*\*

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

William Fletcher, an Idaho state prisoner, appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action alleging constitutionally inadequate dental care. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

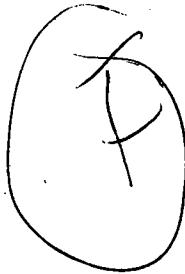
appeal must be filed within 30 days after entry of the judgment or order appealed from).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Fletcher's motion requesting emergency relief (Docket Entry No. 24) is denied.

**AFFIRMED.**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO



WILLIAM FLETCHER,

Plaintiff,

vs.

CORIZON HEALTH SERVICES;  
MICHAEL BLURTON; BOBETTE  
WHITING; and ANDREW  
THUERNAGLE,

Defendants.

Case No. 1:14-cv-00532-BLW

**MEMORANDUM DECISION  
AND ORDER**

**INTRODUCTION**

The Court has before it a motion to reconsider filed by plaintiff Fletcher. The motion is fully briefed and at issue. For the reasons set forth below, the Court will deny the motion.

**ANALYSIS**

Plaintiff William Fletcher is an inmate incarcerated at the Idaho State Correctional Institution operated by the Idaho Department of Correction (IDOC). His lawsuit claims he received inadequate dental care while incarcerated. By making him wait four weeks for dental care and then extracting his teeth in lieu of alternative procedures, Fletcher contends defendants were negligent, committed medical malpractice, and provided constitutionally inadequate dental care. His lawsuit contains a § 1983 claim and various state law claims for negligence and medical malpractice.

Memorandum Decision & Order – page 1

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The Court granted partial summary judgment to the defendants, holding that Fletcher failed to exhaust his administrative remedies prior to filing suit as required by the Prison Litigation Reform Act (PLRA), but finding that the state law claims remained because defendants had not sought summary judgment on those claims. Defendants sought reconsideration of that decision, arguing that they had in fact requested summary judgment on the state law claims. The Court agreed, granted that motion, and entered a final Judgment in defendants' favor.

Fletcher seeks reconsideration of that decision, arguing that (1) defendants waived their right to seek reconsideration; (2) he was not required to exhaust administrative remedies because the Warden misled him into believing that his claim would be resolved; and (3) he did eventually exhaust his administrative remedies in 2016.

None of these arguments warrants reconsideration. Exhaustion of administrative remedies must occur prior to suit being filed – Fletcher filed this action in 2014 so his “exhaustion” in 2016 does not satisfy the PLRA. *Woodford v Ngo*, 548 U.S. 81, 85 (2006). The Warden’s comments did not absolve Fletcher of his duty to exhaust, and the Court specifically rejected this argument in its earlier decision. Fletcher adds nothing new to warrant reconsideration of that decision. Finally, the defendants did nothing to waive their right to seek reconsideration.

For all these reasons, the Court will deny Fletcher’s motion to alter or amend or reconsider.

## ORDER

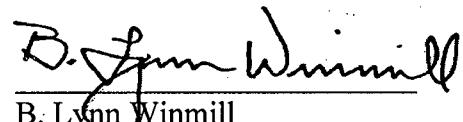
In accordance with the Memorandum Decision above,

**Memorandum Decision & Order – page 2**

NOW THEREFORE IT IS HEREBY ORDERED, that the motion to alter, amend, or reconsider (docket no. 57) is DENIED.



DATED: May 1, 2017

  
\_\_\_\_\_  
B. Lynn Winmill  
Chief Judge  
United States District Court

Case 1:14-cv-00532-BLW Document 56 Filed 11/29/16 Page 1 of 2

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

WILLIAM FLETCHER,

Plaintiff,

vs.

CORIZON HEALTH SERVICES;  
MICHAEL BLURTON; BOBETTE  
WHITING; and ANDREW  
THUERNAGLE,

Defendants.

Case No. 1:14-cv-00532-BLW

**JUDGMENT**

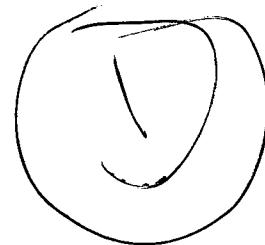
In accordance with the Memorandum Decision filed with this Judgment,  
NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED, that the motion for reconsideration filed by defendants (docket no. 45) is  
GRANTED. The remaining state law claims are DISMISSED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that defendants'  
motion for an extension of time to file a motion for summary judgment if necessary  
(docket no. 52) is DEEMED MOOT.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that the motions  
filed by plaintiff (docket nos. 37, 47, 48 & 51) are DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Clerk close  
this case.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO



WILLIAM FLETCHER,

Plaintiff,

vs.

CORIZON HEALTH SERVICES;  
MICHAEL BLURTON; BOBETTE  
WHITING; and ANDREW  
THUERNAGLE,

Defendants.

Case No. 1:14-cv-00532-BLW

**MEMORANDUM DECISION**

**INTRODUCTION**

The Court has before it a motion to reconsider filed by defendants, and several motions filed by plaintiff William Fletcher. The motions are fully briefed and at issue. For the reasons set forth below, the Court will grant the motion for reconsideration, deny Fletcher's motions, and dismiss this case.

**ANALYSIS**

**Defendants' Motion to Reconsider**

Plaintiff William Fletcher is an inmate incarcerated at the Idaho State Correctional Institution operated by the Idaho Department of Correction (IDOC). His lawsuit claims he received inadequate dental care while incarcerated. By making him wait four weeks for dental care and then extracting his teeth in lieu of alternative procedures, Fletcher contends defendants were negligent, committed medical malpractice, and provided

**Memorandum Decision – page 1**

constitutionally inadequate dental care. His lawsuit contains a § 1983 claim and various state law claims for negligence and medical malpractice.

The defendants filed a motion for summary judgment seeking to dismiss the entire case on the ground that Fletcher failed to exhaust the grievance procedure set up by the IDOC. The Court interpreted the motion more narrowly, holding that it only sought to dismiss Fletcher's § 1983 claim. In its decision, the Court dismissed the § 1983 claim because Fletcher failed to exhaust the IDOC's grievance procedures. *See Memorandum Decision (Dkt. No. 41).*

Defendants have now filed a motion to reconsider, arguing that their original motion sought to dismiss the entire case, including the state law claims for negligence and malpractice. After reviewing the original briefing, the Court agrees.

Idaho's exhaustion requirement is co-extensive with the federal requirement contained in the Prison Liability Reform Act (PLRA). *See Butters v. Valdez*, 241 P.3d 7, 12 (Id.Ct.App. 2010) (finding the case law interpreting the PLRA "persuasive" and holding that "the exhaustion requirement under I.C. § 19-4206(1) demands that the procedural and filing deadlines of a prison's administrative remedy process be complied with"). Thus, Fletcher's state law claims must be dismissed for the same reasons stated in the Court's earlier decision. The Court will therefore grant the motion for reconsideration and issue a separate Judgment dismissing this case in its entirety.<sup>1</sup>

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<sup>1</sup> Defendants filed a motion for extension of time to file a motion for summary judgment if necessary but that motion is moot given the decision set forth above.

**Fletcher's Motions**

Plaintiff Fletcher has filed (1) a request for ADR; (2) a motion for reconsideration of the Court's decision discussed above finding a failure to exhaust the IDOC's grievance procedures; (3) a request for relief seeking a judgment in the sum of \$850,000; and (4) a request to enter final judgment.

In his request for the Court to reconsider its ruling on the exhaustion issue, Fletcher makes the same arguments the Court specifically addressed and rejected in its earlier-filed decision. Fletcher offers no reason to alter that analysis. Because Fletcher has failed to exhaust the grievance procedures, this lawsuit must be dismissed and his remaining motions denied. The Court will enter a separate Judgment denying Fletcher's motions.



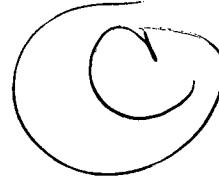
DATED: November 29, 2016

A handwritten signature in black ink that reads "B. Lynn Winmill".

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B. Lynn Winmill  
Chief Judge  
United States District Court

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO



WILLIAM FLETCHER,

Plaintiff,

vs.

CORIZON HEALTH SERVICES;  
MICHAEL BLURTON; BOBETTE  
WHITING; and ANDREW  
THUERNAGLE,

Defendants.

Case No. 1:14-cv-00532-BLW

**MEMORANDUM DECISION AND  
ORDER**

**INTRODUCTION**

The Court has before it defendants' motion for partial summary judgment and plaintiff's motion to amend his complaint. The motions are fully briefed and at issue. For the reasons explained below, the Court will deny the motion to amend and grant the motion for partial summary judgment.

**BACKGROUND**

Plaintiff William Fletcher is an inmate incarcerated at the Idaho State Correctional Institution operated by the Idaho Department of Correction (IDOC). His lawsuit claims he received inadequate dental care while incarcerated. By making him wait four weeks for dental care and then extracting his teeth in lieu of alternative procedures, Fletcher contends defendants were negligent, committed medical malpractice, and provided

**MEMORANDUM DECISION AND ORDER - 1**

constitutionally inadequate dental care. His lawsuit contains a § 1983 claim and various state law claims.

Defendants respond by seeking summary judgment on Fletcher's constitutional claim, arguing that Fletcher did not exhaust his administrative remedies. Because this motion only seeks to dismiss the § 1983 claim, the Court will treat it as a motion for partial summary judgment. Fletcher, in turn, has filed a motion to amend his complaint, which the Court will resolve first.

## ANALYSIS

### Fletcher's Motion to Amend Complaint

Fletcher seeks to amend his complaint with new claims against new parties arising from events unrelated to defendants' dental care. The Court previously declined to permit Fletcher to make a similar amendment. *See Initial Review Order (Dkt. No. 12)* at p. 5-6. The same reasoning applies to the present motion and it will therefore be denied.

### Defendants' Motion for Partial Summary Judgment

Excluding "the rare event that a failure to exhaust is clear on the face of the complaint," summary judgment is the proper procedural vehicle to raise the affirmative defense of exhaustion. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014). Summary judgment is appropriate where a party can show that, as to any claim or defense, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See Fed. R. Civ. P. 56(a)*. A principal purpose of summary judgment "is to isolate and dispose of factually unsupported claims . . ." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). It is "not a disfavored procedural shortcut," but instead is the

“principal tool[ ] by which factually insufficient claims or defenses [can] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources.” *Id.* at 327. “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

The Court must view the evidence in the light most favorable to the non-moving party and must not make credibility findings. *Id.* at 255. The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc). To carry this burden, the moving party need not introduce any affirmative evidence, like affidavits or deposition excerpts, but may simply point out the absence of evidence to support the non-moving party’s case. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir. 2000). The burden then shifts to the non-moving party to produce evidence sufficient to support a jury verdict in his favor. *Id.* at 256-57. The non-moving party must go beyond the pleadings and, by “affidavits, or by the depositions, answers to interrogatories, or admissions on file,” point to the existence of a genuine issue of material fact. *Celotex*, 477 U.S. at 324.

The Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title . . . until such administrative remedies as are available are exhausted.” See 42 U.S.C. § 1997e(a). “There is no question that exhaustion is mandatory under the PLRA and that unexhausted

claims cannot be brought in court.” *Jones v. Bock*, 549 U.S. 199, 211 (2007).

Exhaustion is intended to give “prison officials an opportunity to resolve disputes concerning the exercise of their responsibilities before being haled into court.” *Id.* at 204. By its plain terms, however, the PLRA requires prisoners to exhaust only those avenues of relief that are “available” to them. 42 U.S.C. § 1997e(a).

A defendant bears the burden of proving failure to exhaust. *See Brown v. Valoff*, 422 F.3d 926, 936 (9th Cir. 2005). If the defendant does so, “the burden shifts to the plaintiff to show that the administrative remedies were unavailable.” *Albino v. Baca*, 697 F.3d 1023, 1031 (9th Cir. 2012). Confusing or contradictory information given to a prisoner “informs [the] determination of whether relief was, as a practical matter, ‘available.’” *Brown*, 422 F.3d at 937. Administrative remedies are deemed unavailable if the prisoner shows the required procedural steps were “not known and unknowable with reasonable effort.” *Albino*, 697 F.3d at 1037. It is not enough that the prisoner was subjectively unaware of the proper administrative procedures; exhaustion may be excused only if that lack of awareness was also “objectively reasonable.” *Id.* at 1038.

Here, the IDOC has set up a three step process for inmates to pursue grievances concerning their treatment at the jail. The inmate must first file an Offender Concern Form (OCF). *Hallum Affidavit* (Dkt. No. 21-3) at ¶ 5. If the OCF does not resolve the matter, the inmate may file a grievance form within 30 days of the incident giving rise to the grievance. *Id.* ¶ 6. Finally, IDOC’s decision on the grievance may be appealed. *Id.* ¶ 8.

Although Fletcher filed OCFs, he never initiated the grievance procedure.

Nevertheless, Fletcher argues he exhausted his administrative remedies because the Warden provided a satisfactory response to one of Fletcher's OCFs, indicating that dental care would be provided. But according to Fletcher's own allegations, the delays <sup>UNAVAILABLE</sup> continued for weeks after the Warden's statement. *See Fletcher Brief (Dkt. No. 25)* at p.

2. Indeed, Fletcher filed two OCF's *after* the Warden's statement. *See OCFs (Dkt. No. 25-1)*. The facts are undisputed that the Warden's statements did not (1) stop the alleged delays, (2) affect in any manner the allegedly poor treatment Fletcher ultimately received, (3) mislead Fletcher into believing he did not need to pursue the grievance process, or (4) prevent him from using that process. Hence the Warden's statement is irrelevant.

Fletcher has not shown IDOC's administrative remedies were unavailable to him. The undisputed evidence instead shows that Fletcher, like all prisoners, received "both written and verbal instructions regarding the grievance procedure." *Hallum Affidavit, supra*, at ¶ 4.

One argument made by defendants does concern the Court. The defendants argue that the grievance process is now unavailable to Fletcher because "grievance forms must be submitted within 30 days of the incident giving rise to the grievance." *See Defense Brief (Dkt. No. 21-1)* at p. 9. Fletcher complains of conduct from August 1, 2014 through September 2, 2014 – the grievance process was therefore available to him up to October 2, 2014, but because he failed to file a grievance by that date, "it is now too late for Plaintiff to exhaust the issues in his Complaint," according to defendants. *Id.*

This means that if the Court dismisses Fletcher's § 1983 claim, the option he might otherwise have of completing the grievance process and – if it is not resolved – returning to Court is no longer available. He will be forever barred from bringing his § 1983 claim.

While these circumstances would appear to give Fletcher a powerful unavailability argument, the Supreme Court has foreclosed that avenue for him. In *Woodford v. Ngo*, 548 U.S. 81 (2006), the defendants argued that an inmate failed to exhaust the grievance process because he filed his grievance after a prison's 15-day filing policy had expired.

*Id.* at 86-87. The inmate responded that the grievance process was unavailable to him because of the prison's 15-day filing policy. *Id.* The Supreme Court rejected that argument and found dismissal proper, explaining that “[p]roper exhaustion demands compliance with an agency's deadlines and other critical procedural rules . . .” *Id.* at 91. Thus, as in *Woodford*, Fletcher was required to comply with IDOC's filing policy.

Because Fletcher did not exhaust his administrative remedies, the Court will grant defendants' motion for partial summary judgment.

## ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the defendants' motion for partial summary judgment (docket no. 21) is GRANTED and the claim under 42 U.S.C. § 1983 is DISMISSED.

IT IS FURTHER ORDERED, that the plaintiff's motion to amend (entitled “Addendum”) (docket no. 34) is DENIED.

**MEMORANDUM DECISION AND ORDER - 6**



DATED: April 8, 2016

B. Lynn Winmill

B. Lynn Winmill  
Chief Judge  
United States District Court

**MEMORANDUM DECISION AND ORDER - 7**

**Appellees' Supplemental Excerpts of Record Vol. I of II -0015**

(B)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

WILLIAM FLETCHER,

Plaintiff,

v.

CORIZON, LLC; MICHAEL  
BLURTON; BOBETTE WHITING; and  
DR. ANDREW THUERNAGLE,

Defendants.

Case No. 1:14-cv-00532-CWD

**MEMORANDUM DECISION AND  
ORDER**

**INTRODUCTION**

Pending before the Court are three non-dispositive motions ripe for adjudication in this prisoner civil rights case. (Dkts. 20, 23, and 24.)<sup>1</sup> The Court finds that the decisional process would not be aided by oral argument. Dist. Idaho L. Rule 7.1(d). After reviewing the record and the arguments of the parties, the Court enters the following Order addressing the pending motions.

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<sup>1</sup> Additionally pending is Defendants' Motion for Summary Judgment. (Dkt. 21.) This matter was conditionally assigned to the undersigned Magistrate Judge. However, not all parties filed their consent to magistrate judge jurisdiction. Therefore, this matter must be reassigned to a District Judge for the consideration of the dispositive motion. See Fed. R. Civ. P. 72(b).

## **BACKGROUND**

Plaintiff William Fletcher is in the custody of the Idaho Department of Correction (IDOC) and is currently incarcerated at Idaho State Correctional Center (ISCC).

Plaintiff's claims arise from dental treatment he received at ISCC. The IDOC contracts with Defendant, Corizon Health Services, a private entity, for the medical treatment of its inmates.

On August 1, 2014, Fletcher sought emergency dental treatment at the prison, but was turned away by Defendant Michael Blurton, a registered nurse at the prison, who told Fletcher the pain in his mouth was not an emergency. Compl., ¶ 2. (Dkt. 3 at 3.) Fletcher later attempted to seek treatment from Defendant B. Whiting, a dental assistant at the prison. Whiting allegedly "refuse[d] to make the necessary appointment" for Fletcher to be evaluated by a dentist and said that Fletcher would have to wait to see the dentist. *Id.* Whiting informed Fletcher there was only one part-time dentist available to treat all the inmates in need of dental care. *Id.*

Fletcher was examined by the dentist, Dr. Thuernagle, on September 2, 2014, just over one month after first complaining of the pain in his mouth. Dr. Thuernagle informed Fletcher that he had two abscessed teeth and two cavities and which would ordinarily require a root canal, crowns, and fillings. *Id.* However, Briggs alleges Dr. Thuernagle stated that this treatment was too expensive and would take too much time, so he recommended that the teeth be extracted instead. *Id.*

Fletcher names, as defendants in this case, in addition to Corizon, Michael Blurton, B. Whiting, and Dr. Thuernagle; each defendant is being sued in his individual

capacity. He seeks compensatory damages in the amount of \$125,000 and punitive damages in the amount of \$200,000.

The Court issued an initial review order, finding Fletcher sufficiently stated colorable Eighth Amendment claims against Defendants Blurton, Whiting, and Thuernagle, based on his dental treatment, and also against Corizon, based on alleged understaffing with respect to dental services. Further, the Court found Fletcher sufficiently stated negligence and medical malpractice claims against all Defendants.

## **ANALYSIS**

### **1. Plaintiff's Motion for Discovery (Dkt. 20)**

“[D]iscovery documents must be served upon other counsel and parties but must not be filed with the Clerk of the Court unless on order of the Court or for use in the proceeding.” Dist. Idaho L. Rule 5.4. This Court’s Order provides, “[d]iscovery is exchanged between parties, not filed with the Court.” (Dkt. 19).

Fletcher filed a Motion for Discovery (Dkt. 20), requesting several documents from Defendants. Fletcher’s motion is improper, as discovery is permissible without a motion and it is not necessary for Briggs to file his initial discovery requests with the Court; instead, he should serve his discovery requests by sending them to Defendants directly. Therefore, the Court will deny the motion for discovery.

### **2. Plaintiff's Motion for Stipulation to Attend a Settlement Conference (Dkt. 23)**

“At any time after a civil action or proceedings is commenced, any party may request...a Judicial Settlement Conference.” Dist. Idaho Loc. Civ. R. 16.4(b)(1)(B). The Court’s Scheduling Order provides: “[s]hould Plaintiff and any Defendant wish to attend

a settlement conference, they shall file a stipulation to attend a settlement conference, and the case will then be referred to the Court's ADR Director." (Dkt. 19 at 5.)

Fletcher filed a Motion for Stipulation to Attend a Settlement Conference (Dkt. 23). Fletcher's motion is mislabeled as a "stipulation," as Defendants did not join in the request. Instead, Defendants object to attending a settlement conference, at least at this time.<sup>2</sup> Because both parties do not join in the request for a settlement conference, the Court will deny Fletcher's request.

### **3. Plaintiff's Motion for Stay on 8/17/15 Scheduling Order (Dkt. 23.)**

A party seeking to amend a scheduling order must demonstrate "good cause" to do so. Fed. R. Civ. P. 16(b)(4). This good cause standard "primarily considers the diligence of the party seeking the amendment." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.1992). A court may modify the scheduling order if the deadline cannot be reasonably met despite the diligence of the party seeking the modification. *Id.*

Here, Fletcher requests the Court issue an order staying the Scheduling Order. (Dkt. 19.) Other than including "Motion for Stay on 08/17/15 Scheduling Order" in the caption of his multi motion document, Fletcher does not provide any support as to why the Court should stay the scheduling order. Because Fletcher has not alleged or shown "good cause" to support a modification of the Court's order, the Court will deny Plaintiff's motion without prejudice.

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<sup>2</sup> Defendants expressed their desire to wait until the Court issues its order on the pending Motion for Summary Judgment (Dkt. 21) before discussing the possibility of settlement with Fletcher.

#### **4. Plaintiff's Requests to Amend Complaint**

"A party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). In a court's determination to grant leave to amend, the court considers "whether amendment would prejudice the defendant and whether amendment would be futile." *Ridenour v. Bank of Am., N.A.*, 23 F. Supp. 3d 1201, 1204 (D. Idaho 2014) (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051–52 (9th Cir.2003)).

Fletcher timely makes two requests for leave to amend his complaint.<sup>3</sup> First, he requests leave to join an additional defendant to this lawsuit. (Dkt. 23.) Second, in his motion for discovery, he requests to amend the amount of relief sought in his complaint. (Dkt. 20.) The Court will discuss each request more fully below.

##### **A. Join P.A. C. Brown, employee of Corizon**

Fletcher requests permission to join C. Brown, a physician's assistant employed by Corizon, as a defendant in this law suit. Fletcher alleges, on July 31, 2015, nearly three months shy of one year after the events giving rise to his dental claims, he visited ISCC medical and was seen by Brown for recurring chest pain. Fletcher desires to join Brown, because, allegedly, Brown deliberately failed to treat Fletcher's severe chronic chest pain. Essentially, in addition to Fletcher's desire to join Brown as a party to this lawsuit, Fletcher is requesting to add claims to the current suit—against Brown. The Court finds joinder, as proposed by Fletcher, would be improper.

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<sup>3</sup> The deadline in this case for the parties to file motions to amend or to join parties is November 15, 2015. Schd. Ord, ¶ 2. (Dkt. 19 at 2.)

“[U]nrelated claims against unrelated parties may not be brought in a single action.” *Bishop v. Harrington*, 2013 WL 1962684, at \*2 (E.D. Cal. May 10, 2013), *aff’d*, 586 Fed. Appx. 386 (9th Cir. 2014) (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)). “Plaintiff may bring a claim against multiple defendants so long as (1) the claim arises out of the same transaction or occurrence, or a series of transactions and occurrences, and (2) there are common[ ] questions of law or fact.” *Id.*; Fed. R. Civ. P. 20(a)(2). “Only if the defendants are properly joined under Rule 20(a) will the Court review the other claims to determine if they may be joined under Rule 18(a), which permits joinder of multiple claims against the same party.” *Id.*

The events giving rise to the current claims of inadequate dental care are not related to the events giving rise to Fletcher’s claims against Brown for inadequate medical care for his chest pain. For this reason, joinder is improper. In addition, taking into consideration that a dispositive motion has already been filed and the parties are in the middle of discovery, the Court finds joinder of parties and additional claims, at this time, would result in unnecessary delay. For these reasons, the Court will deny Fletcher’s motion. If Fletcher desires to pursue his claims against Brown, he may do so by filing another lawsuit.<sup>4</sup>

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<sup>4</sup> In Fletcher’s motion for joinder of Brown, he indicated he was in the process of exhausting his administrative remedies. But, in his response to Defendant’s Motion for Summary Judgment Part 2 (Dkt. 29), though Fletcher primarily references his claims related to dental care, he attaches the grievances and appeal form related to his proposed claims against Brown. The Court will construe the attached documents as Fletcher’s reply to Defendant’s response to Fletcher’s motion for joinder of Brown.

**B. Revise amount of relief sought**

Hidden in Fletcher's motion requesting discovery, he requests permission also to amend his complaint to increase the amount of damages requested. In his complaint, Fletcher requested \$125,000 in compensatory damages and \$200,000 in punitive damages.<sup>5</sup> Compl. (Dkt. 3 at 18.) He now seeks to recover \$1.4 million in compensatory and punitive damages. Defendants have not expressed opposition to this motion, as they did not file a response. Should this case proceed to trial, Defendants will have an opportunity to contest the amended figure. Under these circumstances, leave for the amendment will be granted. *See Cimino v. Glaze*, 228 F.R.D. 169, 174 (W.D.N.Y. 2005) ("courts have held that an amendment increasing the amount of claimed damages should generally be allowed, absent some demonstrable prejudice to the defendant.").

**5. Plaintiff's Requests for Appointment of Counsel (Dkt. 20, 23)**

Fletcher also asks the Court to reconsider its earlier order denying his request for appointment of counsel. He contends that, because he is inexperienced with the discovery process and trial, it would be unfair to proceed without counsel.

A pro se prisoner's confusion or ignorance of the law is not, by itself, a reason to appoint counsel. (Dkt. 12.) Fletcher has not established "exceptional circumstances" warranting the appointment of counsel under the standards applicable in the Ninth Circuit. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). Nor has Fletcher met his burden under *Louen v. Twedt*, 2007 WL 915226 (E.D. Cal. March 26,

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<sup>5</sup> In his request to increase damages sought, Fletcher asserts he originally asked for \$550,000 in damages. The Court is unclear how Fletcher computed this total.

2007), establishing grounds for reconsideration for the Court's prior order. He has offered no compelling reason for the Court to reconsider its previous denial of appointment of counsel at this time. Therefore, Fletcher's request for counsel will be denied.

### **CONCLUSION**

The Court will deny Fletcher's Motion Request for Discovery, Motion for Stipulation to Attend a Settlement Conference, Motion for Stay on 08/17/15 Scheduling Order, Motion to Join Defendant Brown, and his requests for appointment of counsel.

The Court will, however, grant Fletcher's motion to amend the complaint to increase the relief originally sought.

### **ORDER**

#### **NOW THEREFORE IT IS HEREBY ORDERED:**

- 1) Plaintiff's Motion Request for Discovery (Dkt. 20) is **DENIED**;
- 2) Plaintiff's Motion for Stipulation to Attend a Settlement Conference (Dkt. 23) is **DENIED**;
- 3) Plaintiff's Motion for Stay on 08/17/15 Scheduling Order (Dkt. 23) is **DENIED** without prejudice;
- 4) Plaintiff's Motion for Joinder for P.A. C. Brown Employee of Corizon Medical (Dkt. 24) is **DENIED**;
- 5) Plaintiff's request to amend relief sought in complaint is **GRANTED**;
- 6) Plaintiff's requests for Appointment of Counsel (Dkt. 20, 23) are **DENIED**;

and

7) The Clerk is directed to reassign this matter to a District Judge due to lack of all parties' consent under Fed. R. Civ. P. 72.



Dated: November 23, 2015

*C.W. Dale*  
Honorable Candy W. Dale  
United States Magistrate Judge