

1 Court. On March 16, 2009, Plaintiff filed a motion to file a Third Amended Complaint – having
2 previously submitted a Third Amended Complaint which was lodged. Because Plaintiff has already
3 amended the Complaint twice, Plaintiff’s pending motion to amend must be granted by the Court
4 before the proposed Third Amended Complaint can be filed.

5 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
6 requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006)
7 (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the
8 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
9 delay in the litigation; or (4) is futile.” Id. The factor of “[u]ndue delay by itself . . . is insufficient
10 to justify denying a motion to amend.” Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d
11 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

12 Here, Plaintiff’s case has been pending for over two years, since February 7, 2007. The delay
13 in litigation will be further extended if Plaintiff is given leave to amend. However, given that the
14 Second Amended Complaint has not been served, and no other party has appeared in the action,
15 amending the complaint once again will not prejudice the opposing party. Plaintiff seeks leave to
16 amend in order to clarify his claims. Good faith appearing, the Court finds that in the interest of
17 justice, Plaintiff’s motion to file a third amended complaint shall be granted.

18 Based on the foregoing, it is HEREBY ORDERED that:

- 19 1. Plaintiff’s motion to file a third amended complaint is GRANTED;
- 20 2. Within thirty days of the date of service of this order Plaintiff SHALL FILE a Third
21 Amended Complaint; and
- 22 3. Failure to obey this order will result in a recommendation that this action be
23 dismissed for failure to obey a court order and for failure to state a claim.

24 IT IS SO ORDERED.

25 **Dated: May 1, 2009**

26 **/s/ Sandra M. Snyder**
27 **UNITED STATES MAGISTRATE JUDGE**