

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESSE T. MOTEN,

 Plaintiff,

 v.

DARREL G. ADAMS, et al.

 Defendants.

CASE NO. 1:07-cv-0924-AWI-MJS (PC)

**ORDER (1) DENYING MOTION TO
AMEND COMPLAINT, AND (2) DENYING
MOTION TO CLARIFY “ERRED” ORDER
DENYING MOTION FOR CASE STATUS
REVIEW**

(ECF Nos. 99, 104)

I. PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se, initiated this case as a civil rights action under 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff’s first amended complaint was found to state a cognizable claim against Defendant Gonzalez for excessive force, but the action subsequently was dismissed, as discussed below. (ECF Nos. 55, 59, 87.)

Specifically, on December 12, 2011, Defendant filed a motion to revoke Plaintiff’s in forma pauperis status on the ground that he had “three strikes” under 28 U.S.C. § 1915(g). (ECF No. 77.) Defendant asked that the court require Plaintiff to post fees or that the case be dismissed. (*Id.*) The United States District Judge assigned to the case

1 granted Defendant's motion and, no fees being posted, dismissed the case. (ECF Nos.
2 84, 86.) A judgment of dismissal was entered on August 13, 2012, and the case was
3 closed. (ECF No. 87.)

4 On December 20, 2012, Plaintiff filed a motion for reconsideration. (ECF No. 88.)
5 On May 2, 2013, Plaintiff filed a motion for case status review and requested a copy of
6 the docket sheet. (ECF No. 92.)

7
8 On May 29, 2013, the Court issued findings and recommendations denying
9 Plaintiff's motion for reconsideration. (ECF No. 94.) Plaintiff sought and was granted two
10 thirty-day extensions of time to file objections. (ECF Nos. 95, 96, 97, 98.) On September
11 6, 2013, Plaintiff filed his objections (ECF No. 100), as well as a motion for leave to file
12 an amended complaint. (ECF No. 99.)

13
14 On September 10, 2013, the Court denied Plaintiff's motion for case status review
15 on the ground that the case had long been closed, and there was no pending status to
16 report to Plaintiff. (ECF No. 101.) On September 30, 2013, the District Judge adopted
17 the Court's findings and recommendations and denied Plaintiff's motion for
18 reconsideration. (ECF No. 102.)

19 On November 4, 2013, Plaintiff filed a motion to clarify the Court's order denying
20 his motion for case status review. (ECF No. 104.)

21 Plaintiff's motion for leave to file an amended complaint (ECF No. 99) and motion
22 to clarify (ECF No. 104) are before the Court for decision.

23 **II. MOTION TO AMEND COMPLAINT**

24
25 Plaintiff argues that good cause exists to grant him leave to amend because he
26 objected to the Court's findings and recommendations. (ECF No. 99.)

1 Under Rule 15(a)(2), the Court should freely give leave to amend a pleading
2 “when justice so requires.” However, a district court may deny leave to amend where
3 there is “any apparent or declared reason’ for doing so, including undue delay, undue
4 prejudice to the opposing party or futility of the amendment.” Lockman Found. v.
5 Evangelical Alliance Mission, 930 F.2d 764, 772 (9th Cir. 1991) (quoting Forman v.
6 Davis, 371 U.S. 178, 182 (1962)).

8 Plaintiff’s second amended complaint was dismissed after Plaintiff’s in forma
9 pauperis status was revoked and Plaintiff failed to pay the filing fee. (ECF Nos. 84, 86.)
10 To date, Plaintiff has not paid the filing fee, nor has he indicated his ability or willingness
11 to pay. Accordingly, leave to amend the complaint would be futile.

12 Accordingly, the motion will be denied.

13 **III. MOTION TO CLARIFY ORDER**

14 Plaintiff’s motion appears to seek reconsideration of this Court’s order denying his
15 motion for case status review. (ECF No. 104.) Plaintiff argues that the order is in error
16 because he was granted an extension of time to file objections to the Court’s findings
17 and recommendations. Thus, Plaintiff contends, the action is not closed.

18 Plaintiff’s objection to the findings and recommendations was considered by the
19 District Judge in his Order Adopting Findings and Recommendations and Denying
20 Plaintiff’s Motion for Reconsideration. (ECF No. 102.) Aside from Plaintiff’s motion to
21 amend the complaint, discussed above, no further motions are pending in this case.
22 There is no pending status nor anything to report to Plaintiff about this case or its docket.

23 Accordingly, the motion will be denied.

24 **IV. CONCLUSION**

25 Based on the foregoing, it is HEREBY ORDERED that:
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Plaintiff's motion to amend complaint (ECF No. 99) is DENIED; and
2. Plaintiff's motion to clarify "erred" order (ECF No. 104) is DENIED.

IT IS SO ORDERED.

Dated: July 9, 2014

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE