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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CURTIS LEE HENDERSON,

Plaintiff,

v.

G. RODRIGUEZ,

Defendant.

CASE NO. 1:08-cv-00188-LJO-DLB PC

ORDER DENYING OBJECTIONS AND
DENYING PLAINTIFF LEAVE TO FILE
AMENDED COMPLAINT

(Doc. 44)

_____ /

Plaintiff Curtis Lee Henderson (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On December 2, 2009, Plaintiff filed objections to the Court’s November 17, 2009 order which directed the Clerk of Court to return Plaintiff’s proposed amended complaint to Plaintiff without filing. Plaintiff contends that the Court mistakenly overlooked its discovery and scheduling order which granted leave to amend the complaint by December 25, 2009. Plaintiff requests that the Court’s November 17, 2009 be vacated and Plaintiff be granted leave to file the amended complaint pursuant to Federal Rule of Civil Procedure 15(a).

Pursuant to the Court’s scheduling order, the deadline to amend the pleadings is November 19, 2009. Plaintiff’s motion is timely under the scheduling order and is therefore governed by Rule 15(a) of the Federal Rules of Civil Procedure, which provides that Plaintiff may amend with leave of the court, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a).

1 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
2 requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006)
3 (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the
4 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
5 delay in the litigation; or (4) is futile.” Id. The factor of “[u]ndue delay by itself . . . is
6 insufficient to justify denying a motion to amend.” Owens v. Kaiser Foundation Health Plan,
7 Inc., 244 F.3d 708, 712-13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58 (9th
8 Cir. 1999)). However, “[w]here the party seeking amendment knows or should know of the
9 facts upon which the proposed amendment is based but fails to include them in the original
10 complaint, the motion to amend may be denied,” E.E.O.C. v. Boeing, Co., 843 F.2d 1213, 1222
11 (9th Cir. 1988) (quoting Jordan v. County of Los Angeles, 669 F.2d 1311, 1324 (9th Cir. 1982),
12 vacated on other grounds, 459 U.S. 810, 103 S. Ct. 35 (1982)), and the “court’s discretion to
13 deny leave to amend is particularly broad where the court has already given the plaintiff an
14 opportunity to amend his complaint,” Fidelity Financial Corp. v. Federal Home Loan Bank of San
15 Francisco, 792 F.2d 1432, 1438 (9th Cir. 1986).

16 The Court has reviewed Plaintiff’s proposed amended complaint and finds the
17 amendments to be futile.¹ Plaintiff adds the following additional allegations against Correctional
18 officers Plighting and Salcedo, and Litigations Officer Theresa. Plaintiff alleges that on October
19 11, 2007, Plaintiff told officer Plighting that he had a court call to make. (Doc. 44, Proposed

20
21 ¹ The Court used the following standard in analyzing Plaintiff’s claims in the proposed amended
22 complaint. The Court is required to screen complaints brought by prisoners seeking relief against a governmental
23 entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint
24 or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim
upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief.
28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the
court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

25 A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to
26 relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the
27 elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.
28 Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65 (2007)).
Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal
conclusions are not. Id.

1 Amended Complaint 13, ¶ 24.) Officer Plighting told Plaintiff that he had seen Plaintiff's name on
2 the department movement sheet, but had heard that Plaintiff had nothing coming. (Id.) Plaintiff
3 then talked to Correctional Officer Salcedo, who went to talk to Litigations Officer Theresa.
4 Officer Salcedo told Plaintiff that Officer Theresa told him that Plaintiff did not have anything.
5 (Id. ¶ 25.) Plaintiff contends that these actions are retaliation.

6 Plaintiff's allegations do not state a cognizable claim against Plighting, Salcedo, or
7 Theresa. Plaintiff fails to allege that any of these officers took an adverse action against Plaintiff
8 in violation of Plaintiff's First Amendment rights.² Based on the allegations, Plighting informed
9 Plaintiff that he had heard Plaintiff did not have anything coming regarding a court call. This is
10 not sufficient to state an adverse action against Plaintiff, as Plighting only informed Plaintiff of
11 what he knew regarding Plaintiff's court call. Officer Salcedo allegedly called Litigation Officer
12 Theresa to verify whether Plaintiff had any court call to make. This is also not sufficient to state a
13 retaliation claim, as it appears both Salcedo and Officer Theresa undertook efforts to determine if
14 Plaintiff had a court call. Plaintiff fails to allege any adverse action taken by these officers. The
15 Court finds that granting Plaintiff's request to amend his pleadings would be futile because the
16 proposed amended complaint fails to state any other cognizable claims against any other
17 defendants.

18 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's objections, filed on
19 December 2, 2009, are DENIED, and Plaintiff's request for leave to file an amended complaint is
20 denied.

21 IT IS SO ORDERED.

22 **Dated: December 23, 2009**

/s/ Dennis L. Beck
23 UNITED STATES MAGISTRATE JUDGE

24 _____
25 ² Allegations of retaliation against a prisoner's First Amendment rights to speech or to petition the
26 government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985); see also
27 Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995).
28 "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An
assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected
conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action
did not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir.
2005).