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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 LOUIS BRANCH,

12 Plaintiff,

13 v.

14 D. UMPHENOUR, et al.,

15 Defendants.
16

Case No. 1:08-cv-01655-SAB (PC)

ORDER REGARDING PLAINTIFF'S
PROPOSED FIFTH AMENDED
COMPLAINT

(ECF No. 369)

17 Louis Branch ("Plaintiff"), a state prisoner proceeding *pro se* and *in forma pauperis*, filed
18 this civil rights action pursuant to 42 U.S.C. § 1983.

19 This action is proceeding on Plaintiff's fourth amended complaint against Defendant
20 Umphenour for retaliation, and Defendant's response is presently due on or before January 14,
21 2022. (ECF No. 368.)

22 On December 27, 2021, Plaintiff lodged a proposed fifth amended complaint. (ECF No.
23 369.) To the extent that Plaintiff seeks to amend the complaint, he may not amend by merely
24 submitting a proposed amended complaint.

25 "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so
26 requires.' " AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir.
27 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts "need not grant leave to amend where the
28 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue

1 delay in the litigation; or (4) is futile.” Id. The factor of “ ‘[u]ndue delay by itself ... is
2 insufficient to justify denying a motion to amend.’ ” Owens v. Kaiser Foundation Health Plan,
3 Inc., 244 F.3d 708, 712, 713 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58
4 (9th Cir. 1999)).

5 At this stage of the proceedings, Plaintiff may only amend the complaint with the
6 opposing party's written consent or leave of court. Fed. R. Civ. P. 15(a)(2). Plaintiff has not
7 requested leave or provided consent by the opposing party. In addition, as stated in the Court’s
8 December 15, 2021 screening order, given the prior amendments further leave to amend would
9 be futile. (ECF No. 368.)

10 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's proposed fifth
11 amended complaint, lodged by Plaintiff on December 27, 2021, shall not be filed by the Court.

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13 IT IS SO ORDERED.

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15 Dated: January 7, 2022


UNITED STATES MAGISTRATE JUDGE