

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

LOUIS BRANCH,

Plaintiff,

vs.

N. GRANNIS, et al.,

Defendants.

1:08-cv-01655-AWI-GSA-PC

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
(Doc. 85.)

ORDER DIRECTING CLERK TO FILE
THIRD AMENDED COMPLAINT
LODGED ON APRIL 22, 2013
(Doc. 86.)

I. BACKGROUND

Louis Branch ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil action. Plaintiff filed the Complaint commencing this action on July 7, 2008. (Doc. 1.) This case now proceeds on the Second Amended Complaint filed by Plaintiff on August 25, 2010, against defendants Correctional Officer ("C/O") Umphenour and Does 1 and 2, for failure to protect Plaintiff in violation of the Eighth Amendment, and against defendant Umphenour for retaliation in violation of the First Amendment, in their individual capacities, for money damages only.¹ (Doc. 26.)

On October 30, 2012, the court entered a Scheduling Order setting deadlines in this action, including a deadline to amend pleadings of April 30, 2013 and a discovery cut-off date

¹ On May 11, 2011, the Court dismissed all other claims and defendants from this action, based on Plaintiff's failure to state a claim. (Doc. 29.) The Doe defendants have not been served.

1 of June 30, 2013. (Doc. 73.) On April 8, 2013, Plaintiff filed a motion to extend the deadline
2 to amend pleadings. (Doc. 83.) On April 15, 2013, the court entered an order granting
3 Plaintiff's motion and extending the deadline to amend pleadings to May 31, 2013. On April
4 22, 2013, Plaintiff filed a motion for leave to amend. (Doc. 85.) Defendants have not filed an
5 opposition.

6 Plaintiff's motion to amend is now before the court.

7 **II. RULE 15(a) - LEAVE TO AMEND**

8 **A. Legal Standard**

9 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the
10 party's pleading once as a matter of course at any time before a responsive pleading is served.
11 Fed. R. Civ. P. 15(a). Otherwise, a party may amend only by leave of the court or by written
12 consent of the adverse party, and leave shall be freely given when justice so requires. Id. Here,
13 because Plaintiff has already amended the complaint twice and defendant Umphenour has filed
14 an answer to the complaint, Plaintiff requires leave of court to file a Third Amended
15 Complaint.

16 "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so
17 requires.'" AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir.
18 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts "need not grant leave to amend where
19 the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an
20 undue delay in the litigation; or (4) is futile." Id. The factor of "[u]ndue delay by itself . . . is
21 insufficient to justify denying a motion to amend." Owens v. Kaiser Foundation Health Plan,
22 Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58
23 (9th Cir. 1999)).

24 **B. Plaintiff's Motion**

25 Plaintiff seeks to amend the complaint to add the proper names of the two Doe
26 Defendants. Upon review of Plaintiff's proposed Third Amended Complaint, it appears that
27 Plaintiff has not materially amended the Second Amended Complaint except to identify
28 defendants Does 1 and 2 as C/O L. Szalai and C/O J. Alvarez, respectively. The court finds no

1 evidence of bad faith by Plaintiff or futility in the amendment, and Defendants have not
2 opposed the motion to amend. Therefore, in the interest of justice, Plaintiff's motion for leave
3 to amend shall be granted, and the Clerk shall be directed to file the Third Amended Complaint
4 which was lodged on April 22, 2013.

5 **III. CONCLUSION**

6 Based on the foregoing, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's motion for leave to amend, filed on April 22, 2013, is GRANTED;
- 8 2. The Clerk is directed to file the Third Amended Complaint which was lodged on
9 April 22, 2013; and
- 10 3. The court shall screen the Third Amended Complaint and initiate service of
11 process upon defendants C/O L. Szalai and C/O J. Alvarez in due time.

12
13
14
15 IT IS SO ORDERED.

16 Dated: July 9, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE