

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

CHRISTOPHER R. LUTE,

CASE NO. 1:08-cv-01981-SMS PC

Plaintiff,

ORDER DENYING MOTION TO AMEND,
WITHOUT PREJUDICE

v.

(Doc. 18)

R. BEERS, et al.,

Defendants.

Plaintiff Christopher R. Lute, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 30, 2008. On July 1, 2010, Plaintiff filed a motion requesting that he be permitted to file the amended complaint he submitted to the Court on June 21, 2010. Plaintiff asserts that pursuant to the scheduling order, he has until August 9, 2010, within which to file an amended complaint.

Defendants filed an answer to Plaintiff’s complaint on February 5, 2010. Therefore, at this juncture in the proceedings, Plaintiff may only amend with the Court’s permission. Fed. R. Civ. P. 15(a). Plaintiff’s current motion merely requests that his amended complaint be filed in because it was submitted prior to the deadline, and the motion was not accompanied by the proposed amended complaint. Plaintiff is required to file a motion setting forth the grounds for seeking leave to amend,

///

1 and Plaintiff is required to submit the proposed amended pleading with the motion.^{1,2} Fed. R. Civ.
2 P. 7(b)(1); Local Rule 220.

3 Plaintiff did not meet his burden as the party moving for relief, and his motion to amend,
4 filed July 1, 2010, is DENIED, without prejudice.

5
6 IT IS SO ORDERED.

7 **Dated: July 8, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

¹ The existence of the deadline does not provide Plaintiff the right to amend without leave of court. Plaintiff must still meet his burden as the party moving for leave to amend, which requires the establishment of grounds in support of the relief requested. “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile.” Id.

28
² The Court does not keep copies of documents that are returned to the sender by the Clerk’s Office, as Plaintiff’s contends occurred with the proposed amended complaint he submitted on June 21, 2010.