PC) Johnson v. H	arrington et al Il	Doc. 9)
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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
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11	SHAWN PIERRE JOHNSON,	1:09-cv-00277-LJO-SMS-PC	
12	Plaintiff,	ORDER GRANTING LEAVE TO AMEND COMPLAINT	
13	V.	ORDER FOR CLERK TO FILE SECOND	
14	K. HARRINGTON, et al.,	AMENDED COMPLAINT WHICH WAS LODGED ON JANUARY 13, 2010	
15	Defendants.	(Doc. 8.)	
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17 18	Shawn Pierre Johnson ("plain	tiff") is a state prisoner proceeding pro se and in forma	
19	pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February		
20	12, 2009. (Doc. 1.) On March 3, 2009, plaintiff filed the First Amended Complaint. (Doc. 7.) On		
21	January 12, 2010, plaintiff submitted a proposed Second Amended Complaint which was lodged by the		
22	Court on January 13, 2010. (Doc. 8.)		
23	Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party's		
24	pleading once as a matter of course at any time before a responsive pleading is served. Fed. R. Civ. P.		
25	15(a). Otherwise, a party may amend only by leave of the court or by written consent of the adverse		
26	party, and leave shall be freely given when justice so requires. <u>Id</u> . Here, because plaintiff has already		
27	amended the complaint once, plaintiff may amend again only by leave of the court.		
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"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. The factor of "[u]ndue delay by itself . . . is insufficient to justify denying a motion to amend." Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

Here, plaintiff's case has been pending since February 12, 2009 and now proceeds on the First Amended Complaint filed March 5, 2009. The delay in litigation will be further extended if plaintiff is given leave to amend. However, given that the complaint has not been served, and no other party has appeared in the action, amending the complaint will not prejudice the opposing party. The court has reviewed the proposed Second Amended Complaint and finds no evidence of bad faith or futility. Therefore, in the interest of justice, plaintiff's motion to amend the complaint shall be granted.

Based on the foregoing, it is HEREBY ORDERED that:

- 1. Plaintiff is GRANTED leave to amend the complaint; and
- 2. The Clerk of the Court SHALL FILE the Second Amended Complaint which was lodged on January 13, 2010.

IT IS SO ORDERED.

Dated: April 1, 2010 /s/ Sandra M. Snyder UNITED STATES MAGISTRATE JUDGE

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