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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL MANRIQUEZ,

CASE NO. 1:09-cv-00456-LJO-SMS PC

Plaintiff,

v.

ORDER GRANTING PLAINTIFF’S MOTION TO FILE AMENDED COMPLAINT AND WITHDRAW PREVIOUSLY FILED AMENDED COMPLAINT AND ORDERING CLERK’S OFFICE TO FILE FIRST AMENDED COMPLAINT

HUCHINS, et al.,

Defendants.

(ECF Nos. 142, 143)

ORDER WITHDRAWING PLAINTIFF’S MOTION TO AMEND COMPLAINT, MOTION FOR REMOVAL OF EXHIBITS FROM COMPLAINT, MOTION TO SUPPLEMENT PARAGRAPH, AMENDED COMPLAINT AND SUPPLEMENTAL PARAGRAPH

/ (ECF Nos. 66, 68, 69, 70)

Plaintiff Daniel Manriquez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the complaint, filed March 11, 2009, against Defendants J. Huchins, J. Reynoso, M. Hacker, R. Roberson, C. Munoz, D. Daley, P. Perez, Paz, C. Morse, Omos, and Clausings for cruel and unusual punishment in violation of the Eighth Amendment. On April 1, 2011, Plaintiff filed a motion for leave to file an amended complaint, motion for leave to remove exhibits from the amended complaint, and lodged a first amended complaint. (ECF Nos. 66, 68.) Plaintiff filed a motion to supplement a paragraph of the proposed complaint and lodged a supplemental paragraph on April

1 25, 2011. (ECF No. 69, 70.) On September 6, 2011, Plaintiff filed a motion for leave to file an
2 amended complaint and request to withdraw his previously filed motion and amended complaint and
3 lodged a first amended complaint. (ECF Nos. 142, 143.)

4 Plaintiff's motion to withdraw his motion for leave to amend the complaint and related
5 documents shall be granted.

6 Plaintiff requests leave to file an amended complaint to correct the name of a defendant,
7 identify defendants, and add additional defendants and claims. Under Rule 15(a) of the Federal
8 Rules of Civil Procedure, a party may amend the party's pleading once as a matter of course at any
9 time before a responsive pleading is served. Otherwise, a party may amend only by leave of the
10 court or by written consent of the adverse party, and leave shall be freely given when justice so
11 requires. Fed. R. Civ. P. 15(a). "Rule 15(a) is very liberal and leave to amend 'shall be freely given
12 when justice so requires.'" Amerisource Bergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th
13 Cir. 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts "need not grant leave to amend where
14 the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
15 delay in the litigation; or (4) is futile." Id. The factor of "[u]ndue delay by itself . . . is insufficient
16 to justify denying a motion to amend." Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d
17 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

18 Plaintiff's motion for leave to file a first amended complaint shall be granted. The Court is
19 required to screen complaints brought by prisoners seeking relief against a governmental entity or
20 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a
21 complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or
22 malicious," that "fails to state a claim on which relief may be granted," or that "seeks monetary relief
23 against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). A screening order
24 shall issue once the first amended complaint has been screened.

25 Accordingly, it is HEREBY ORDERED that:

- 26 1. Plaintiff's motion for leave to file a first amended complaint, motion for leave for
27 removal of exhibits from complaint filed April 1, 2011, and first amended complaint
28 lodged April 1, 2011, are WITHDRAWN;

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- 2. Plaintiff's motion to supplement paragraph filed April 25, 2011, and supplemental paragraph lodged April 25, 2011, are WITHDRAWN;
- 3. Plaintiff's motion for leave to file a first amended complaint, filed September 6, 2011, is GRANTED; and
- 4. The Clerk's Office shall file Plaintiff's first amended complaint, lodged September 6, 2011.

IT IS SO ORDERED.

Dated: October 19, 2011

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE