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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MICHAEL MOOTRY,

Plaintiff,

v.

E. G. FLORES, et al.,

Defendants.

CASE NO. 1:09-cv-01252-OWW-SMS PC

ORDER DENYING PLAINTIFF’S MOTION FOR  
LEAVE TO FILE AN AMENDED COMPLAINT

(ECF No. 28)

ORDER GRANTING PLAINTIFF’S MOTION  
FOR AN EXTENSION OF TIME

(ECF No. 33)

THIRTY-DAY DEADLINE

\_\_\_\_\_  
Plaintiff Michael Mootry (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On April 12, 2011, Plaintiff filed a motion to amend the relief section of his complaint. (ECF No. 28.) Defendants’ filed a motion to dismiss on June 10, 2011. (ECF No. 32.) Plaintiff filed a motion for an extension of time to file an opposition to Defendants’ motion on June 23, 2011. (ECF No. 33.) Good cause having been shown, the Court shall grant Plaintiff’s motion for an extension of time.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so requires.’” Amerisource Bergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)). However,

1 courts “need not grant leave to amend where the amendment: (1) prejudices the opposing party; (2)  
2 is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile.” Id. The factor  
3 of “[u]ndue delay by itself . . . is insufficient to justify denying a motion to amend.” Owens v.  
4 Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade,  
5 198 F.3d 752, 757-58 (9th Cir. 1999)).

6 Plaintiff filed a motion for leave to amend, but has not provided a copy of the amended  
7 complaint or specified the relief he is seeking. Therefore, the Court is unable to determine if the  
8 amendment should be allowed. Plaintiff’s motion shall be denied, without prejudice. Plaintiff may  
9 re-submit his motion with the amended complaint. Plaintiff is advised that if he submits a proposed  
10 second amended complaint, it must be complete within itself in that it sets forth the claims found  
11 cognizable against Defendants T. Billings, Cabrera, E.G. Flores, R. Grissom, Hedgpeth, G.D. Lewis,  
12 D. Tarnoff, and C. Wegman.

13 Accordingly, it is HEREBY ORDERED that:

- 14 1. Plaintiff’s motion for leave to file an amended complaint, filed April 12, 2011, is  
15 DENIED without prejudice;
- 16 2. Plaintiff’s motion for an extension of time, filed June 23, 2011, is GRANTED; and
- 17 3. Within thirty days from the date of service of this order, Plaintiff shall submit his  
18 opposition to Defendants’ motion to dismiss.

19 IT IS SO ORDERED.

20 **Dated: June 24, 2011**

21 /s/ Sandra M. Snyder  
22 UNITED STATES MAGISTRATE JUDGE  
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