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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 CHRISTOPHER SIMMONS,

12 Plaintiff,

13 vs.

14 CDCR, et al.,

15 Defendants.
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1:10-cv-00553-AWI-GSA-PC

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
(Doc. 48.)

ORDER DIRECTING CLERK TO FILE
THIRD AMENDED COMPLAINT
SUBMITTED ON DECEMBER 19,
2014
(Docs. 48-1, 48-2, 48-3.)

ORDER DENYING DEFENDANT
CDCR'S MOTION TO DISMISS AS
MOOT
(Doc. 38.)

21 **I. BACKGROUND**

22 Christopher Simmons ("Plaintiff") is a state prisoner proceeding with counsel in this
23 civil rights action filed pursuant to Title V of the Americans with Disabilities Act of 1990
24 (ADA), California's Disabled Person Act (CDPA), and the Unruh Civil Rights Act (Unruh
25 Act). This action was initiated by civil complaint filed by Plaintiff, proceeding pro se, in the
26 Kern County Superior Court on December 17, 2009 (Case #S-1500-CV-269232, DRL). On
27 March 29, 2010, defendant California Department of Corrections and Rehabilitation (CDCR)
28 removed the case to federal court by filing a Notice of Removal of Action pursuant to 28

1 U.S.C. § 1441(a)(1). (Doc. 1.) To date, no other defendant has made an appearance in this
2 action. On June 30, 2014, Plaintiff acquired counsel. (Doc. 33.)

3 This case now proceeds with the Second Amended Complaint, filed by Plaintiff on July
4 21, 2014, against defendants CDCR, Anthony Hedgpeth, Robert Keldgord, Jonathan Akanno,
5 D. Campas, and J. Covarrubias, for retaliating against Plaintiff for the exercise of his civil
6 rights pursuant to the ADA.¹ (Doc. 33.)

7 On December 19, 2014, Plaintiff filed a motion for leave to amend the complaint and
8 submitted a proposed Third Amended Complaint. (Docs. 48, 48-1, 48-2, 48-3.) On December
9 30, 2014, defendant CDCR filed a statement of non-opposition to the motion. (Doc. 50.)

10 **II. LEAVE TO AMEND – RULE 15(a)**

11 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the
12 party’s pleading once as a matter of course at any time before a responsive pleading is served.
13 Fed. R. Civ. P. 15(a). Otherwise, a party may amend only by leave of the court or by written
14 consent of the adverse party. *Id.* “Rule 15(a) is very liberal and leave to amend ‘shall be freely
15 given when justice so requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d
16 1132, 1136 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant
17 leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad
18 faith; (3) produces an undue delay in the litigation; or (4) is futile.” *Id.* The factor of “[u]ndue
19 delay by itself . . . is insufficient to justify denying a motion to amend.” Owens v. Kaiser
20 Foundation Health Plan, Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade,
21 198 F.3d 752, 757-58 (9th Cir. 1999)).

22 Plaintiff’s motion is unopposed. Because defendant CDCR has consented in writing to
23 Plaintiff’s amendment, the court finds no prejudice to the opposing party in allowing the
24 amendment. Any delay in the litigation due to the amendment appears reasonable, and the
25 court finds no evidence of bad faith or futility. Therefore, Plaintiff’s motion shall be granted,
26 and the Clerk shall be directed to file the Third Amended Complaint.

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28 ¹ On December 16, 2014, the court issued an order dismissing defendant Kern Valley State
Prison from this action, without prejudice, on Plaintiff’s motion for voluntary dismissal. (Doc. 47.)

1 **III. DEFENDANT CDCR'S MOTION TO DISMISS**

2 On October 2, 2014, defendant CDCR filed a motion to dismiss the Second Amended
3 Complaint for failure to state a claim. (Doc. 38.) In light of the present order granting Plaintiff
4 leave to file a Third Amended Complaint, the motion to dismiss is moot and shall be denied as
5 such.

6 **IV. CONCLUSION**

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

- 8 1. Plaintiff's motion for leave to amend, filed on December 19, 2014, is
9 GRANTED;
- 10 2. The Clerk is directed to FILE the Third Amended Complaint submitted to the
11 court on December 19, 2014; and
- 12 3. Defendant CDCR's motion to dismiss, filed on October 2, 2014, is DENIED as
13 moot.

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15 IT IS SO ORDERED.

16 Dated: January 4, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE