



1 the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is  
2 futile.” Id. The factor of “[u]ndue delay by itself . . . is insufficient to justify denying a motion to  
3 amend.” Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting  
4 Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

5 Plaintiff submitted the Second Amended Complaint less than one month after he filed the First  
6 Amended Complaint. Plaintiff indicates in the Second Amended Complaint that he is amending the  
7 complaint to include a malpractice cause of action. (Lodged 2ACP, Doc. 7 at 1:16-19.) The Court now  
8 has before it, for screening, the First Amended Complaint and the lodged Second Amended Complaint.<sup>2</sup>  
9 Because the Court has not screened the First Amended Complaint or thoroughly reviewed the Second  
10 Amended Complaint, and Plaintiff seeks to amend the First Amended Complaint to add a cause of  
11 action, the Court finds good cause to allow Plaintiff to proceed with the Second Amended Complaint.  
12 The Court finds no evidence that Plaintiff seeks to amend in bad faith, or that allowing the amendment  
13 prejudices the defendants, produces an undue delay in the litigation, or is futile. Therefore, the Court  
14 shall allow Plaintiff to file a Second Amended Complaint at this stage of the proceedings, and the  
15 Second Amended Complaint shall supercede the First Amended Complaint. See Loux v. Rhay, 375  
16 F.2d 55, 57 (9th Cir. 1967).

17 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 18 1. Plaintiff is granted leave to file a Second Amended Complaint;
- 19 2. The Clerk is DIRECTED to file the Second Amended Complaint which was lodged by  
20 Plaintiff on July 6, 2010; and
- 21 3. The Court shall screen the Second Amended Complaint in due time.

22  
23 IT IS SO ORDERED.

24 **Dated: December 8, 2011**

24 /s/ Gary S. Austin  
25 UNITED STATES MAGISTRATE JUDGE

26 \_\_\_\_\_  
27 <sup>2</sup>The Court is required to screen complaints brought by prisoners, such as Plaintiff, seeking relief against a  
28 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).