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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
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L1	RICK DIXON,	1:10-cv-02365-GSA-PC	
12	Plaintiff,	ORDER GRANTING MOTION FOR LEAVE TO AMEND	
13	vs.	ORDER DIRECTING CLERK TO FILE	
14	KATHLEEN ALLISON, et al.,	THIRD AMENDED COMPLAINT LODGED ON OCTOBER 9, 2014	
15	Defendants.	(Doc. 23.)	
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18	I. BACKGROUND		

Rick Dixon ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on December 20, 2010. (Doc. 1.)

On January 20, 2011, Plaintiff consented to the jurisdiction of a Magistrate Judge in this action, and no other parties have made an appearance. (Doc. 7.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

The court screened the Complaint and entered an order on April 17, 2013, dismissing the Complaint for failure to state a claim, with leave to amend. (Doc. 12.) On May 20, 2013,

Plaintiff filed the First Amended Complaint. (Doc. 13.) The court screened the First Amended Complaint and entered an order on January 27, 2014, dismissing the First Amended Complaint for failure to state a claim, with leave to amend. (Doc. 15.) On May 8, 2014, Plaintiff filed the Second Amended Complaint. (Doc. 21.)

On October 23, 2014, Plaintiff filed a motion for leave to amend and lodged a proposed Third Amended Complaint. (Doc. 23.) Plaintiff's motion for leave to amend is now before the court.

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#### LEAVE TO AMEND – RULE 15(a)

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. Fed. R. Civ. P. 15(a). 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. Id. Here, because Plaintiff has already amended the complaint more than once, Plaintiff requires leave of court to file a Third Amended Complaint.

"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)).

## **Plaintiff's Motion**

Plaintiff requests leave to file a Third Amended Complaint to make corrections and additions to the Second Amended Complaint. Plaintiff explains that he discovered, through research, that he needs to re-state his claims to meet federal standards. Plaintiff has lodged a proposed Third Amended Complaint for the court's review.

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#### **Discussion**

Plaintiff's allegations and claims in this action arise from events at the Substance Abuse Treatment Facility in Corcoran, California, beginning on July 25, 2008, during which Plaintiff's rights were violated by prison officials who subjected him to sixteen months of lockdown. The proposed Third Amended Complaint arises from the same events documented in the Second Amended Complaint. In light of the fact that Plaintiff submitted the proposed Third Amended Complaint before the court had screened the Second Amended Complaint, the court finds no undue delay or prejudice to defendants in allowing the amendment. The court finds no evidence of bad faith by Plaintiff or futility in allowing the amendment. Accordingly, Plaintiff's motion to amend shall be granted, and the Third Amended Complaint shall be filed.

### **III.** CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to amend, filed on October 9, 2014, is GRANTED; and

 The Clerk is directed to file the proposed Third Amended Complaint which was lodged on October 9, 2014.

# IT IS SO ORDERED.

Dated:	November 10, 2014	/s/ Gary S. Austin	
		UNITED STATES MAGISTRATE JUDGE	
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