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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

BOB BEJARANO,  
  
                                Plaintiff,  
  
                                v.  
  
ALLISON, et al.,  
  
                                Defendants.

Case No. 1:11-cv-00589 LJO DLB PC  
  
ORDER DENYING PLAINTIFF’S  
MOTION TO AMEND COMPLAINT  
  
(Document 102)

Plaintiff Bob Bejarano (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 12, 2011, and it now proceeds on Plaintiff’s February 8, 2012, Second Amended Complaint against Defendants M. Bejarano and O. Best for retaliation in violation of the First Amendment.

Plaintiff filed the instant motion to amend on January 29, 2015. Defendants opposed the motion on February 16, 2016. Plaintiff did not file a reply and the motion is therefore ready for decision pursuant to Local Rule 230(l).

**A.     PROCEDURAL HISTORY**

On June 28, 2012, the Court determined that Plaintiff’s February 8, 2012, Second Amended Complaint stated a retaliation claim against Defendants Bejarano and Best.

On February 19, 2013, Defendants filed an unenumerated Rule 12(b) motion based on failure to exhaust. The Court granted the motion on August 20, 2013, and dismissed Plaintiff’s claims without prejudice.

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1 Plaintiff appealed the dismissal. On August 3, 2015, the Ninth Circuit vacated and remanded  
2 this Court's dismissal because at the time this Court granted the motion to dismiss in 2013, it did not  
3 have the benefit of the Ninth Circuit's 2014 decision in Albino v. Baca. The Ninth Circuit remanded  
4 the case so that the exhaustion question could be determined on summary judgment, as required by  
5 Albino.

6 Therefore, on August 28, 2015, the Court vacated the judgment and ordered Defendants to  
7 file a response.

8 Defendants filed their answer on September 28, 2015, and the Court issued a Discovery and  
9 Scheduling Order on September 29, 2015.

10 On December 16, 2015, Defendants filed a motion for summary judgment based on  
11 exhaustion.

12 The Court granted Defendants' motion to stay discovery on December 17, 2016, and stayed  
13 non-merits based discovery.

14 The Court has granted Plaintiff three extensions of time to oppose the motion. His  
15 opposition is currently due on or about March 21, 2016.

16 On January 29, 2016, Plaintiff filed the instant motion to amend.

17 **B. ALLEGATIONS IN SECOND AMENDED COMPLAINT**

18 Plaintiff is currently incarcerated at California State Prison- Sacramento. The events at issue  
19 occurred while he was incarcerated at the California Substance Abuse Treatment Facility.

20 Plaintiff alleges that he was placed on contraband surveillance watch ("CSW") from  
21 February 17, 2010, through February 20, 2010. Plaintiff told Defendants Best and Bejarano that he  
22 was "going to grievance them for harassing him" and placing him on CSW based on a mere  
23 suspicion. ECF No. 27, at 5. Plaintiff was released from the CSW with negative results.

24 Plaintiff filed his grievance on March 9, 2010.

25 Plaintiff alleges that Defendants retaliated against him by placing him on CSW for a second  
26 time from April 13, 2010, through April 16, 2010. He was released with negative results.

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1 **C. LEGAL STANDARD**

2 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so  
3 requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir. 2006)  
4 (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the  
5 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue  
6 delay in the litigation; or (4) is futile.” AmerisourceBergen Corp., 465 F.3d at 951. Relevant to the  
7 futility factor, a plaintiff may not bring unrelated claims against unrelated parties in a single action.  
8 Fed. R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); George v.  
9 Smith, 507 F.3d 605, 607 (7th Cir. 2007).

10 **D. DISCUSSION**

11 1. Proposed Amendments

12 Plaintiff did not submit a proposed Third Amended Complaint with his motion, though it  
13 appears that he seeks to add three new Defendants to his retaliation claim- Defendants W. Jones, F.  
14 Vasquez and B. Odle. He alleges that Defendant Odle signed off on Plaintiff’s February 17, 2010,  
15 CSW placement and “knowingly and intentionally placed Plaintiff without following proper  
16 procedures of CSW.” ECF No. 102, at 2. Defendants Jones and Vasquez signed and approved  
17 Plaintiff’s April 13, 2010, placement in CSW, “knowingly and intentionally for a retaliation and in  
18 violation of Plaintiff’s constitutional rights...without following proper procedures on CSW.” ECF  
19 No. 102, at 2.

20 2. Analysis

21 Plaintiff first fails to explain why he could not have brought these claims sooner. While he  
22 filed this motion within the time for amending set forth in the Scheduling and Discovery order, he  
23 provides no explanation why he waited almost five years after filing his original complaint to move  
24 to amend.<sup>1</sup> Without *any* explanation, Plaintiff cannot avoid a finding of undue delay.

25 Second, allowing an amendment at this late date would be severely prejudicial to Defendants.  
26 This case has been pending since April 2011, and it is now proceeding on Plaintiff’s February 8,  
27 2012, Second Amended Complaint. Based on the allegations in that complaint, Defendants Best and

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<sup>1</sup> The Discovery and Scheduling Order set January 27, 2016, as the deadline to amend. Plaintiff signed and mailed this motion on January 26, 2016.

1 Bejarano were successful on an exhaustion challenge, though the action was ultimately remanded  
2 back to this Court for procedural reasons. That remand led to further time spent in converting the  
3 exhaustion challenge into a motion for summary judgment, which Defendants filed on December 16,  
4 2015. The motion is pending, and Plaintiff has not yet filed an opposition. Perhaps hoping to  
5 continue this action after the disposition of the motion, Plaintiff now asks to add new Defendants.  
6 However, allowing new claims against new Defendants years later, and after a remand to consider  
7 the exhaustion issue on a motion for summary judgment, would be prejudicial to Defendants given  
8 the time and effort spent defending this action. AmerisourceBergen Corp., 465 F.3d at 951-54  
9 (prejudice existed where potentially high, additional litigation costs would result from delayed  
10 amendment).

11 Third, Plaintiff's amendments appear futile. Setting aside the fact that Defendant Vasquez  
12 was already dismissed from this action on screening, Plaintiff's allegations do not support a  
13 retaliation claim. Defendants may have been involved in approving his CSW, but Plaintiff does not  
14 connect their action to any protected conduct. Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir.  
15 2005). Whether they followed procedures or not does not, alone, suggest that they acted in a  
16 retaliatory manner.

17 For these reasons, Plaintiff's motion to amend is DENIED.

18 IT IS SO ORDERED.

19 Dated: March 11, 2016

20 /s/ Dennis L. Beck  
21 UNITED STATES MAGISTRATE JUDGE  
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