

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL MASTERSON,

1:11-cv-01179-GSA-PC

Plaintiff,

ORDER GRANTING MOTION FOR LEAVE
TO AMEND AND SUPPLEMENT THE
COMPLAINT
(Doc. 21. Also Resolves Doc. 20.)

v.

SUZANNE KILLEN, et al.,

Defendants.

ORDER DIRECTING CLERK TO FILE
SECOND AMENDED/SUPPLEMENTAL
COMPLAINT LODGED ON MARCH 1, 2013
(Doc. 22.)

_____ /

I. BACKGROUND

Daniel Masterson (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 18, 2011. (Doc. 1.) On March 19, 2012, Plaintiff filed the First Amended Complaint. (Doc. 18.) On November 19, 2012, Plaintiff filed a motion for stay of the proceedings in this action while he exhausts administrative remedies. (Doc. 20.) On March 1, 2013, Plaintiff filed a motion for leave to amend and supplement the complaint. (Doc. 21.) Plaintiff also lodged a proposed Second Amended/Supplemental Complaint on March 1, 2013. (Doc. 22.)

Plaintiff’s motion for leave to amend and supplement the complaint is now before the Court.

///

///

1 **II. LEGAL STANDARDS**

2 **A. Motion to Amend – Rule 15(a)**

3 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s
4 pleading once as a matter of course at any time before a responsive pleading is served. Otherwise,
5 a party may amend only by leave of the court or by written consent of the adverse party, and leave
6 shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). Here, Plaintiff has previously
7 amended the Complaint, and no other party has appeared. Therefore, Plaintiff requires leave of court
8 to amend his complaint.

9 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
10 requires.’” Amerisource Bergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006)
11 (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the
12 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
13 delay in the litigation; or (4) is futile.” Id. The factor of “[u]ndue delay by itself . . . is insufficient
14 to justify denying a motion to amend.” Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d
15 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

16 **B. Motion to File Supplemental Complaint – Rule 15(d)**

17 A supplemental complaint adds allegations to the complaint of events occurring after the
18 original complaint was filed. Fed. R. Civ. P. 15(d). Under Rule 15(d), “the court may, on just terms,
19 permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that
20 happened after the date of the pleading to be supplemented.” Id. A party may only file a
21 supplemental complaint with leave of court. Id.

22 When considering whether to allow a supplemental complaint, the Court considers factors
23 such as whether allowing supplementation would serve the interests of judicial economy; whether
24 there is evidence of delay, bad faith or dilatory motive on the part of the movant; whether
25 amendment would impose undue prejudice upon the opposing party; and whether amendment would
26 be futile. See San Luis & Delta-Mendota Water Authority v. United States Department of the
27 Interior, 236 F.R.D. 491, 497 (E.D. Cal. 2006) (citing Keith v. Volpe, 858 F.2d 467 (9th Cir. 1988),
28 ///

1 Foman v. Davis, 371 U.S. 178 (1962), and Planned Parenthood of S. Ariz. v. Neely, 130 F.3d 400
2 (9th Cir. 1997)).

3 **III. PLAINTIFF’S MOTION**

4 Plaintiff seeks leave to file a Second Amended/Supplemental Complaint, to add defendants
5 and allegations arising from events occurring after this action was filed on July 18, 2011. Plaintiff
6 claims that he has exhausted his administrative remedies for the later-occurring events.

7 **Discussion**

8 Plaintiff filed the First Amended Complaint on March 19, 2012, which superceded Plaintiff’s
9 original Complaint filed on July 18, 2011. Lacey v. Maricopa County, 693 F 3d. 896, 907 n.1 (9th
10 Cir. 2012)(en banc). The First Amended Complaint names as defendants Suzanne Killen, Velva
11 Rowell, Brad Hall, Patricia Medved, and R.M. Hall. In brief, Plaintiff alleges that defendants denied
12 his request for copies, reassigned him from a paying job to a non-paying job, improperly processed
13 his prison grievances, denied him access to the law library, issued adverse CDC-128 chronos against
14 him, threatened him, and took money from his prison trust account, in a concerted effort to retaliate
15 against him for filing prison grievances. Plaintiff brings claims for retaliation under the First
16 Amendment, and for violation of his rights to due process and equal protection under the Fourteenth
17 Amendments.

18 This action has been pending since July 2011, and if new defendants and claims are added
19 at this stage of the proceedings, screening the complaint and serving process may take longer.
20 However, given that the complaint has not been served and no other party has appeared in the action,
21 amending the complaint at this juncture will not prejudice the opposing party or cause an undue
22 delay in the litigation. The court has reviewed the proposed Second Amended/Supplemental
23 Complaint and finds no evidence of bad faith or dilatory motive on Plaintiff’s part, or futility in
24 allowing leave to amend and supplement the complaint. Plaintiff proposes to add seven new
25 defendants and new allegations of incidents occurring between August 11, 2011 and August 29,
26 2012. (Doc. 22 at 21-43 ¶¶47-86.) The new allegations are a continuation of Plaintiff’s allegations
27 in the First Amended Complaint of retaliatory acts against him, and Plaintiff alleges that all of the
28 defendants acted in concert. Allowing supplementation of the complaint would serve the interests

1 of judicial economy, because Plaintiff will be able to bring all of his related allegations and claims
2 in one action, rather than in multiple actions. Based on this analysis, Plaintiff's motion to amend and
3 supplement the complaint shall be granted. This order shall also resolve Plaintiff's motion for stay,
4 filed on November 19, 2012.¹

5 **IV. CONCLUSION**

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

- 7 1. Plaintiff's motion for leave to amend and supplement the complaint, filed on March
8 1, 2013, is GRANTED;
- 9 2. The Clerk of the Court is directed to FILE the Second Amended/Supplemental
10 Complaint which was lodged on March 1, 2013; and
- 11 3. This order also resolves Plaintiff's motion for stay, filed on November 19, 2012.

12
13 IT IS SO ORDERED.

14 **Dated: March 7, 2013**

/s/ Gary S. Austin
15 UNITED STATES MAGISTRATE JUDGE

16
17
18
19
20
21
22
23
24
25
26 ¹In the motion for stay, Plaintiff requests a stay of the proceedings in this action while he exhausts
27 administrative remedies with respect to related allegations and claims occurring after the date the original Complaint
28 was filed, "therefore allowing Plaintiff to petition the Court to file a Second Amended and Supplemental Complaint."
(Doc. 20 at 3-4.) Because Plaintiff now claims that he has exhausted all of his administrative remedies and seeks
leave to file a Second Amended/Supplemental Complaint, the motion for stay is moot.