



1           The Magistrate Judge recommended that Plaintiff be denied leave to amend  
2 because his proposed allegations failed to state a cognizable retaliation claim and thus,  
3 leave to amend would be futile. Plaintiff devotes a substantial portion of his objections to  
4 responding to admonishments from the Magistrate Judge regarding the length of the  
5 proposed amended complaint and inclusion therein of claims that already were  
6 dismissed with prejudice. These arguments do not raise an issue of fact or law under the  
7 findings and recommendations and will not be addressed further.

8           Plaintiff argues that he should have been permitted to file a supplemental  
9 complaint instead of an amended complaint. Supplemental pleadings are permitted to  
10 add a transaction, occurrence, or event that happened after the date of the pleading to  
11 be supplemented. In this case, the pleading to be supplemented (i.e., Plaintiff's second  
12 amended complaint) was filed on January 22, 2013. Although some of the actions  
13 Plaintiff seeks to add occurred after that date, many of them occurred in 2011 and 2012.  
14 Accordingly, the Magistrate Judge properly required Plaintiff to move to amend his  
15 complaint to add these claims.

16           Plaintiff argues he should be allowed to amend because the facts contained in his  
17 proposed amended complaint fall within the "continual violation doctrine." The continuing  
18 violation doctrine applies in certain circumstances to allow claims that might otherwise  
19 be time barred to proceed. See, e.g., Garcia v. Brockway, 526 F.3d 456, 462 (9th Cir.  
20 2008). There is no suggestion at this time Plaintiff's claims are time-barred and thus no  
21 reason to examine the continuing violation doctrine in this case.

22           Plaintiff purports to state new, additional facts to support a finding of adverse  
23 action sufficient to chill a person of ordinary firmness to support his proposed retaliation  
24 claims. The Court finds Plaintiff's factual summary difficult to follow. Additionally, some  
25 facts appear to be inconsistent with allegations Plaintiff has raised previously.  
26 Regardless, however, Plaintiff's allegations are insufficient to support a claim of  
27 retaliation for the reasons stated in the findings and recommendations. He has failed to  
28 present facts to show that he has suffered adverse action that would chill a person of

1 ordinary firmness from engaging in protected First Amendment activity. Plaintiff contends  
2 for the first time that Defendants' conduct constitutes adverse action because their  
3 written reports and chronos could be reviewed during a parole determination. As  
4 Defendants point out, however, nothing before the Court indicates whether Plaintiff is  
5 eligible for parole. In any event, the allegedly retaliatory communications merely reiterate  
6 the contentions that serve as the basis of the operative complaint. Put differently,  
7 Defendants expressed concerns regarding Plaintiff's behavior in chronos written in June  
8 2011. They reiterated those concerns – based on Plaintiff's behavior in June 2011 – later  
9 in 2011 and in 2012 and 2014. Plaintiff provides no basis to conclude that such repetition  
10 would have any adverse effect on any parole determination.

11 Significantly, the Court also concludes that Plaintiff's allegation that Defendants'  
12 conduct was motivated by retaliation appears to be based purely on conjecture. While  
13 Plaintiff plainly engaged in a lengthy course of filing regular administrative grievances  
14 and informal complaints over the course of at least three years, this is insufficient to  
15 allege that Defendant's sporadic involvements in his mental health placement following  
16 his transfer from their care constituted retaliation. See Estrada v. Gomez, No. No. C 96–  
17 1490 S1 (PR), 1998 WL 514068 \* 3 (N.D.Cal.1998). Rather, it appears that Plaintiff is  
18 requesting the Court to “pass on the legitimacy of all actions the prisoner did not like.” Id.

19 Accordingly, it is HEREBY ORDERED that:

- 20 1. The Court adopts the findings and recommendation, filed January 28, 2016  
21 (ECF No. 105), in full; and
- 22 2. Plaintiff's motion for leave to file an amended complaint (ECF No. 87) is  
23 DENIED.

24 IT IS SO ORDERED.

25 Dated: September 15, 2016

/s/ Lawrence J. O'Neill  
26 UNITED STATES CHIEF DISTRICT JUDGE

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