

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 JOSE LEDESMA,

12 Plaintiff,

13 vs.

14 J. TYREE, et al.,

15 Defendants.
16
17
18

1:13-cv-01227-AWI-GSA-PC

ORDER VACATING FINDINGS AND
RECOMMENDATIONS ENTERED ON
JUNE 24, 2016
(ECF No. 19.)

ORDER FOR CLERK TO FILE THIRD
AMENDED COMPLAINT LODGED
ON JULY 24, 2016
(ECF No. 21.)

19 Plaintiff Jose Ledesma (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
20 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On June 24, 2016, the
21 Court entered findings and recommendations, recommending that this case proceed on
22 Plaintiff’s Second Amended Complaint against defendants Adame, Tyree, and Lundy for
23 violation of the Eighth Amendment based on adverse conditions of confinement, and that all
24 remaining claims and defendants be dismissed with prejudice. (ECF No. 19.) On July 21,
25 2016, Plaintiff filed objections to the findings and recommendations and lodged a Third
26 Amended Complaint. (ECF No. 20, 21.)

27 Plaintiff objects to the Court’s recommendation to dismiss his retaliation claim and
28 seeks leave to file a Third Amended Complaint for the Court’s review. Plaintiff states that he

1 “recently acquired understanding about what requisite factual allegations must be made to
2 make out the [retaliation] claim,” and he believes his proposed Third Amended Complaint
3 states a First Amendment retaliation claim. (ECF No. 20 at 1.)

4 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
5 requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir.
6 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where
7 the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an
8 undue delay in the litigation; or (4) is futile.” Id. Upon a review of the proposed Third
9 Amended Complaint, the Court finds no bad faith, undue delay, prejudice to the opposing
10 party, or futility in allowing Plaintiff to file the Third Amended Complaint. Therefore, in the
11 interest of justice, the Court shall vacate the findings and recommendations and direct the Clerk
12 to file the Third Amended Complaint lodged on July 21, 2016.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations entered on June 24, 2016 are VACATED;
- 15 2. Plaintiff is granted leave to file a Third Amended Complaint for the Court’s
16 review;
- 17 3. The Clerk of Court is directed to file the Third Amended Complaint lodged on
18 July 21, 2016; and
- 19 4. The Court shall screen the Third Amended Complaint in due course.

20
21 IT IS SO ORDERED.

22 Dated: September 15, 2016

23 /s/ Eric P. Gross
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28