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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 RICHARD SANSONE,

9 Plaintiff,

10 vs.

11 J. C. THOMAS,

12 Defendant.
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1:13-cv-01942-LJO-GSA-PC

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
(Doc. 20.)

ORDER FOR CLERK TO FILE FIRST
AMENDED COMPLAINT LODGED ON
SEPTEMBER 18, 2014
(Doc. 22.)

ORDER STAYING DISCOVERY
PENDING FURTHER ORDER

16 **I. BACKGROUND**

17 Richard Sansone ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
18 in this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on the original
19 Complaint filed by Plaintiff on December 2, 2013, against defendant Correctional Officer J. C.
20 Thomas, for use of excessive force in violation of the Eighth Amendment.¹ (Doc. 1.)

21 On September 2, 2014, defendant Thomas filed an Answer to the Complaint. (Doc. 14.)
22 This case is now in the discovery phase, pursuant to the court's scheduling order issued on
23 September 5, 2014. (Doc. 16.)

24 On September 18, 2014, Plaintiff filed a motion for leave to amend the Complaint, and
25 lodged a proposed First Amended Complaint. (Doc. 20, 22.) Defendant Thomas has not filed
26 an opposition.

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¹ On May 29, 2014, the court issued an order dismissing all other claims and defendants from
this action, based on Plaintiff's failure to state a claim. (Doc. 11.)

1 **II. MOTION FOR LEAVE TO AMEND – RULE 15(a)**

2 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the
3 party’s pleading once as a matter of course at any time before a responsive pleading is served.
4 Otherwise, a party may amend only by leave of the court or by written consent of the adverse
5 party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). Because
6 Plaintiff does not have written consent of defendant Thomas, Plaintiff requires leave of court to
7 file an amended complaint.

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

16 Plaintiff seeks to amend the Complaint to make minor corrections, add Doe defendants,
17 and add new claims to this action. Plaintiff argues that the new claims are related to the
18 existing claim in this action.

19 **Discussion**

20 The court has reviewed the proposed First Amended Complaint. Plaintiff seeks to add
21 defendant Jane Doe (Dental Assistant) for inadequate medical care, for asking Plaintiff
22 improper questions during a dental appointment and for denying Plaintiff medical care for three
23 hours after he was assaulted, in violation of the Eighth Amendment. Plaintiff also seeks to add
24 defendant John Doe #1 (Correctional Officer) for use of excessive force in violation of the
25 Eighth Amendment, for participating in the assault against Plaintiff by pouncing on Plaintiff’s
26 neck with his knee. In addition, Plaintiff seeks to add defendant John Doe #2 (Correctional
27 Sergeant) for denying Plaintiff medical care for three hours after he was assaulted. Further,
28 Plaintiff seeks to add defendants John Doe #3 (Appeals Coordinator) and John Doe #4

1 (Warden), for denial of access to courts and due process violations, for failing to respond to the
2 inmate appeals Plaintiff submitted to them.

3 The court finds Plaintiff's proposed new claims to be related, under Rule 18(a), to the
4 existing excessive force claim against defendant Thomas, because they arise from the same
5 allegations found in Plaintiff's original Complaint. The court finds no evidence of bad faith by
6 Plaintiff or of futility in allowing the First Amended Complaint to be filed. The court finds no
7 undue delay or prejudice to Defendant in allowing Plaintiff's amendment, and Defendant has
8 not raised any argument concerning these or any other considerations. Therefore, Plaintiff's
9 motion for leave to amend shall be granted, and the Clerk shall be directed to file the proposed
10 First Amended Complaint.

11 The First Amended Complaint shall be screened in due time under 28 U.S.C. § 1915A.
12 Therefore, discovery in this action shall be stayed pending further court order.

13 **III. CONCLUSION**

14 Based on the foregoing, it is HEREBY ORDERED that:

- 15 1. Plaintiff's motion for leave to amend, filed on September 18, 2014, is
16 GRANTED;
- 17 2. The Clerk is directed to file Plaintiff's First Amended Complaint which was
18 lodged on September 18, 2014;
- 19 3. The First Amended Complaint shall be screened in due time under 28 U.S.C. §
20 1915A; and
- 21 4. Discovery in this action is STAYED pending further court order.

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23 IT IS SO ORDERED.

24 Dated: November 13, 2014

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