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

COREY LAMAR SMITH, et al.,  
Plaintiffs,  
v.  
ARNOLD SCHWARZENEGGER, et al.,  
Defendants.

Case No. 1:14-cv-00060-LJO-SAB  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENYING PLAINTIFFS’  
MOTION TO AMEND THE CONSOLIDATED  
COMPLAINT  
(ECF No. 182)  
OBJECTIONS DUE WITHIN FOURTEEN DAYS

**I.**  
**BACKGROUND**

On May 20, 2015, this court issued a findings and recommendations recommending granting Defendants’ motion to dismiss the consolidated complaint filed in this action on the ground that Defendants are entitled to qualified immunity. (ECF No. 164.) Plaintiffs filed objections to the findings and recommendations on June 24, 2015. (ECF No. 175.)

While the findings and recommendations was still pending before the district judge, Plaintiffs filed a motion to amend the consolidated complaint on September 9, 2015. (ECF No. 182.) This motion was stayed pending the district judge’s decision on the outstanding findings and recommendations. (ECF No. 184.) On October 7, 2015, a memorandum decision and order issued dismissing the Eighth Amendment claims without leave to amend on the ground that

1 Defendants are entitled to qualified immunity; and declining to exercise supplemental jurisdiction  
2 over the state law claims raised in the consolidated complaint.<sup>1</sup> (ECF No. 186.) The  
3 memorandum order left this action open so the undersigned could rule on the pending motion to  
4 amend the consolidated complaint.

5 Accordingly, this Court now addresses the motion to amend the consolidated complaint  
6 filed on September 9, 2015.

7 **II.**  
8 **DISCUSSION**

9 Amendments of the pleadings are governed by Rule 15 of the Federal Rules of Civil  
10 Procedure. Under Rule 15(a), a party may amend the party’s pleading once as a matter of course  
11 at any time before a responsive pleading is served. Otherwise, a party may amend only by leave  
12 of the court or by written consent of the adverse party, and leave shall be freely given when  
13 justice so requires. Fed. R. Civ. P. 15(a). Rule 15(a) is very liberal and leave to amend ‘shall be  
14 freely given when justice so requires.’” Amerisource Bergen Corp. v. Dialysis West, Inc., 465  
15 F.3d 946, 951 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant  
16 leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad  
17 faith; (3) produces an undue delay in the litigation; or (4) is futile.” Id.

18 In this instance, Plaintiffs seek leave to file an amended consolidated complaint to add the  
19 former secretary of the California Department of Corrections and Rehabilitation as a defendant in  
20 this action. (ECF No. 182 at 2.) In the October 7, 2015 memorandum order, the Court found that  
21 Defendants are entitled to qualified immunity on the Eighth Amendment claims under any  
22 definition of the constitutional right at issue. (ECF No. 186 at 10.) Therefore, the Eighth  
23 Amendment claims were dismissed without leave to amend. (Id. at 23.) As the Court has  
24 determined that Defendants are entitled to qualified immunity on the federal claims raised in the  
25 consolidated complaint and the federal claims have been dismissed without leave to amend, the  
26 Court finds that amendment of the complaint to add an additional defendant would be futile.

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<sup>1</sup> The stay of this motion shall be lifted by order filed subsequently with this findings and recommendations.

1 Accordingly, the Court recommends that the motion to amend the consolidated complaint be  
2 denied.

3 **III.**

4 **CONCLUSION AND ORDER**

5 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 6 1. Plaintiffs' motion to file an amended consolidated complaint be DENIED; and  
7 2. The Clerk of the Court be directed to close this action.

8 These findings and recommendations are submitted to the district judge assigned to this  
9 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen  
10 (14) days of service of this recommendation, any party may file written objections to these  
11 findings and recommendations with the Court and serve a copy on all parties. Such a document  
12 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The  
13 district judge will review the magistrate judge's findings and recommendations pursuant to 28  
14 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified  
15 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th  
16 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17 IT IS SO ORDERED.

18 Dated: October 19, 2015

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20 UNITED STATES MAGISTRATE JUDGE