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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 CLARENCE L. HEARNS,

12 Plaintiff,

13 vs.

14 A. HEDGPETH, et al.,

15 Defendants.  
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1:14-cv-00408-GSA-PC

ORDER DENYING PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND  
(Doc. 15.)

17 **I. BACKGROUND**

18 Clarence L. Hearn (‘‘Plaintiff’’) is a state prisoner proceeding pro se and in forma  
19 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
20 commencing this action on February 13, 2013 at the U.S. District Court for the Northern  
21 District of California. (Doc. 1.) On June 4, 2013, the court dismissed the Complaint with leave  
22 to amend. (Doc. 9.) On June 27, 2013, Plaintiff filed the First Amended Complaint. (Doc.  
23 10.) The court screened the First Amended Complaint pursuant to 28 U.S.C. § 1915A and  
24 issued an order on October 4, 2013, dismissing defendants Terrance, Hedgpeth, Jensen,  
25 Medina, Halderman, Noland, and Perez from this action with prejudice, and transferring the  
26 case to the Eastern District of California. (Doc. 11.)

27 On April 3, 2014, Plaintiff consented to Magistrate Judge jurisdiction in this action  
28 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (Doc. 14.)

1 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of  
2 California, the undersigned shall conduct any and all proceedings in the case until such time as  
3 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

4 On August 18, 2014, Plaintiff filed a motion for leave to file a Second Amended  
5 Complaint. (Doc. 15.)

6 **II. LEAVE TO AMEND – RULE 15(a)**

7 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the  
8 party’s pleading once as a matter of course at any time before a responsive pleading is served.  
9 Fed. R. Civ. P. 15(a). Otherwise, a party may amend only by leave of the court or by written  
10 consent of the adverse party, and leave shall be freely given when justice so requires. Id.

11 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so  
12 requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir.  
13 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where  
14 the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an  
15 undue delay in the litigation; or (4) is futile.” Id. The factor of “[u]ndue delay by itself . . . is  
16 insufficient to justify denying a motion to amend.” Owens v. Kaiser Foundation Health Plan,  
17 Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58  
18 (9th Cir. 1999)). Because Plaintiff has already amended the complaint once, and he does not  
19 have Defendants’ consent to amend, Plaintiff requires leave of court to file a Second Amended  
20 Complaint.

21 **A. Plaintiff’s Motion**

22 Plaintiff seeks to amend the complaint to add newly discovered facts, to “resume this  
23 action against defendants Hedgpeth, warden at Salinas Valley State Prison and Correctional  
24 Sergeant Jensen at Salinas Valley State Prison.” (Motion at 1.) Plaintiff asserts that since these  
25 defendants were dismissed from the First Amended Complaint, he has received documentary  
26 evidence that Salinas Valley State Prison’s R&R had actual possession of Plaintiff’s legal  
27 property since September 12, 2010.

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