

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OMAR GARCIA, JR.,
Plaintiff,
v.
TULARE COUNTY MAIN JAIL, et al.,
Defendants.

) Case No.: 1:14-cv-00476-BAM (PC)
) ORDER GRANTING PLAINTIFF'S MOTION FOR
LEAVE TO FILE AMENDED COMPLAINT
) (ECF No. 21)
)
) ORDER DIRECTING CLERK OF COURT TO
FILE LODGED AMENDED COMPLAINT
) (ECF No. 10)
)
)

I. Background

Plaintiff Omar Garcia, Jr. (“Plaintiff”), proceeding pro se and in forma pauperis, initiated this civil rights action pursuant to 42 U.S.C. § 1983 on April 3, 2014. On January 16, 2015, the Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A, and found that it stated a cognizable claim against Defendants O’Rafferty, Kaious and Doe 1 for excessive force in violation of the Fourteenth Amendment, against Defendants Onstott and Doe 1 for failure to intervene in violation of the Fourteenth Amendment, against Defendants O’Rafferty, Kaious, Flores, Avina, Meyers and Ellis for deliberate indifference to serious medical needs in violation of the Fourteenth Amendment, but did not state any other cognizable claims. Fed. R. Civ. P. 8(a); *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff was ordered to either file

1 an amended complaint or notify the Court of his willingness to proceed on the cognizable claims.
2 (ECF No. 8.) On February 2, 2015, Plaintiff filed a notice of his willingness to proceed on the
3 cognizable claims. (ECF No. 9.)

4 Based on Plaintiff's notice, on February 4, 2015, the Court directed service on Defendants
5 O'Rafferty, C. Kaious, M. Onstott, J. Flores, Meyers, Avina, and Ellis. However, the Court did not
6 find service appropriate for Defendant Doe 1 because the U. S. Marshal could not serve a Doe
7 Defendant. Additionally, the Court dismissed all other federal claims and defendants, with prejudice,
8 based on Plaintiff's failure to state any claims upon which relief may be granted. (ECF No. 10.)

9 On May 5, 2015, Defendants Onstott, Kaiois (sued as C. Kaious), Ellis, Myers (erroneously
10 sued as Meyers), Avina, Flores, Jr. (sued as J. Flores), and O'Rafferty filed an answer. (ECF No. 14.)

11 Following Defendants' answer, the Court issued a Discovery and Scheduling Order, which set
12 the deadline to amend pleadings as November 6, 2015. The order also set the discovery deadline as
13 January 6, 2016, and the dispositive motion deadline as March 14, 2016. (ECF No. 16.)

14 On July 22, 2015, Plaintiff filed the instant motion to amend his complaint in order "to cure the
15 deficiencies within his original complaint, and to state with specificity how each defendant caused
16 harm to Plaintiff." (ECF No. 21 at 1.) Plaintiff contends that since the filing of his complaint he has
17 been able to "ascertain and identify four individual causes of action which will aid the court in
18 adjudicating the case." (ECF No. 21 at 1.) In addition to his moving papers, Plaintiff also lodged his
19 proposed amended complaint. (ECF No. 20.) Defendants did not respond to the pending motion.

20 The matter is deemed submitted pursuant to Local Rule 230(l).

21 **II. Legal Standard**

22 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend its pleading once
23 as a matter of course twenty-one days after serving, or if a response was filed, within twenty-one days
24 after service of the response. Fed. R. Civ. P. 15(a). Otherwise, a party may amend only by leave of the
25 court or by written consent of the adverse party, and leave shall be freely given when justice so
26 requires. Fed. R. Civ. P. 15(a). "Rule 15(a) is very liberal and leave to amend 'shall be freely given

when justice so requires.”” *Amerisource Bergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006). However, courts “need not grant leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile.” *Id.* The factor of “[u]ndue delay by itself . . . is insufficient to justify denying a motion to amend.”” *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708, 712-13 (9th Cir. 2001) (quoting *Bowles v. Reade*, 198 F.3d 752, 757-58 (9th Cir. 1999)).

III. Discussion

In his lodged amended complaint, Plaintiff appears to propose the following amendments: (1) expressly identifying Tulare County as a defendant; (2) adding a section 1983 claim against Tulare County; (3) adding a state law claim for negligence against Defendants O'Rafferty, Kaiois, Onstott, Flores, Myers, Avina and Ellis; (4) adding a state law claim for violation of Government Code section 845.6 against Tulare County, O'Rafferty, Kaiois, Onstott, Flores, Myers, Avina and Ellis; and (4) clarifying his requested relief, including amounts sought in compensatory and punitive damages. (ECF No. 21.)

The Court has reviewed the proposed amended complaint and finds that leave to amend should be granted. In considering the relevant factors, the Court finds no indication that the amendment will result in prejudice to Defendants currently appearing in this action. Defendants, by failing to oppose the motion, have waived any argument regarding prejudice. Moreover, the proposed amendment does not change the nature of Plaintiff's underlying action against Defendants.

The Court also finds no indication that the amendment is sought in bad faith or will unduly delay these proceedings. Any potential delay resulting from amendment is not attributable to dilatory conduct by Plaintiff in these proceedings. Plaintiff timely filed his motion for leave to amend and Defendants voiced no objections. Admittedly, the discovery deadline in this action passed on January 6, 2016, however, the Court intends to screen the amended complaint upon its filing and, if necessary and appropriate, modify the relevant discovery and dispositive motion deadlines. As the proposed

1 amended complaint does not substantially alter the underlying allegations in this action, the Court does
2 not anticipate that additional discovery, if any, would be extensive.

3 Finally, Plaintiff's amendments do not appear wholly futile. More importantly, the Court
4 intends to screen the amended complaint pursuant to 28 U.S.C. § 1915A(a). The Court will dismiss
5 any portion of Plaintiff's amended complaint that is frivolous or malicious, fails to state a claim upon
6 which relief may be granted, or seeks monetary relief from a defendant who is immune from such
7 relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

8 **IV. Conclusion and Order**

9 Based on the foregoing reasons, IT IS HEREBY ORDERED as follows:

10 1. Plaintiff's motion for leave to file an amended complaint, filed on July 22, 2015, is
11 GRANTED.

12 2. The Clerk of the Court is DIRECTED to file the First Amended Complaint, lodged on July
13 22, 2015 (ECF No. 20);

14 3. After filing, the Court will screen the First Amended Complaint in due course; and

15 4. Defendants Onstott, Kaiois, Ellis, Darrell Myers, Avina, Flores, Jr., and O'Rafferty are not
16 required to file a responsive pleading or other response to the amended complaint unless
17 and until directed by the Court.

18
19 IT IS SO ORDERED.

20 Dated: February 16, 2016

21 /s/ *Barbara A. McAuliffe*
22 UNITED STATES MAGISTRATE JUDGE