



1 Although Defendants did not file an opposition to Plaintiff’s instant motion to amend the  
2 complaint, for the reasons explained below, Plaintiff’s motion must be denied.

3 **I.**

4 **DISCUSSION**

5 Under Federal Rule of Civil Procedure 15(a), a party may amend a pleading once as a matter of  
6 course within 21 days of service, or if the pleading is one to which a response is required, 21 days after  
7 service of the responsive pleading. “In all other cases, a party may amend its pleading only with the  
8 opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Here, Defendants  
9 filed an answer on February 4, 2015. (ECF No. 31.) Therefore, Plaintiff requires either consent of  
10 Defendants or leave of the Court to file an amended complaint. Defendants have not consented to  
11 amendment by Plaintiff.

12 Granting or denying leave to amend a complaint is in the discretion of the Court, Swanson v.  
13 United States Forest Service, 87 F.3d 339, 343 (9th Cir. 1996), though leave should be “Freely given  
14 when justice so requires.” Fed. R. Civ. P. 15(a)(2). “In exercising this discretion, a court must be  
15 guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than on the  
16 pleadings or technicalities.” United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981). After a  
17 defendant files a responsive pleading, leave to amend should not be granted where “amendment would  
18 cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay.” Madeja  
19 v. Olympic Packers, 310 F.3d 628, 636 (9th Cir. 2002) (citing Yakima Indian Nation v. Wash. Dep’t  
20 of Revenue, 176 F.3d 1241, 1246 (9th Cir. 1999)). There is no abuse of discretion “in denying a  
21 motion to amend where the movant presents no new facts but only new theories and provides no  
22 satisfactory explanation for his failure to fully develop his contentions originally.” Bonin v. Calderon,  
23 59 F.3d 815, 845 (9th Cir. 1995); see also Allen v. City of Beverly Hills, 911 F.2d 367, 374 (9th Cir.  
24 1990).

25 **A. Prior Amendments**

26 The Court’s discretion to deny amendment is “particularly broad” where a plaintiff has  
27 previously amended his complaint. Allen, 911 F.2d at 373. In this instance, Plaintiff has previously  
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1 amended the complaint twice, once as a matter of right and the other with court permission. (ECF  
2 Nos. 8, 9, 12, 18.) Thus, this factor weighs against amendment.

3 **B. Undue Delay**

4 Undue delay, alone, is insufficient to deny leave to amend the pleadings. Howey v. United  
5 States, 481 F.2d 1187, 1191 (9th Cir. 1973); DCD Programs v. Leighton, 833 F.2d 183, 186 (9th Cir.  
6 1986). However, in combination with other factors, delay may be sufficient to deny amendment. See  
7 Hurn v. Ret. Fund Trust of Plumbing, 648 F.2d 1252, 1254 (9th Cir. 1981). Evaluating undue delay,  
8 the Court considers “whether the moving party knew or should have known the facts and theories  
9 raised by the amendment in the original pleading.” Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387  
10 (9th Cir. 1990). Also, the Court should examine whether “permitting an amendment would ...  
11 produce an undue delay in the litigation.” Id. at 1387.

12 Here, Plaintiff seeks leave to amend to hold “all defendants accountable.” Plaintiff offers no  
13 reason why he could not and did not seek to amend the complaint prior to the responsive pleading or  
14 he could not have added whatever claims he now seeks to raise in the prior complaints. Thus, this  
15 factor weighs against amendment.

16 **C. Bad Faith**

17 There are no facts from which the Court can infer that Plaintiff acted in bad faith, and this  
18 factor does not weigh against amendment.

19 **D. Futility of Amendment**

20 “Futility of amendment can, by itself, justify the denial of a motion for leave to amend.”  
21 Bonin, 59 F.3d at 845; see also Miller v. Rykoff-Sexton, 845 F.2d 209, 214 (9th Cir. 1988) (“A motion  
22 for leave to amend may be denied if it appears to be futile or legally insufficient”). Futility may be  
23 found where added claims are duplicative of existing claims of patently frivolous, or both. See Bonin,  
24 59 F.3d at 846. Here, Plaintiff does not set forth the claims for which he seeks amendment, and the  
25 Court cannot determine the propriety of amendment or whether amendment would be futile which  
26 weighs against amendment.

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**Prejudice to Opposing Party**

Prejudice is the most critical factor in determine whether leave to amend should be granted. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). The burden of showing prejudice is on the party opposing an amendment to the complaint. DCD Programs, 833 F.2d at 187.

In this instance, Defendants have filed an answer and a motion for summary judgment addressing the second amended complaint, and allowing Plaintiff to amend, at this juncture for some unknown reason, could possibly prejudice the Defendants. However, the Defendants failed to object so the Court can infer that they believe they would not be prejudiced, but in light of the above analysis the Court finds that the motion should be denied.

**II.**  
**ORDER**

Based on the foregoing, after weighing all the relevant factors Plaintiff's motion for leave to file a third amended complaint must be DENIED.

IT IS SO ORDERED.

Dated: May 20, 2015

  

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UNITED STATES MAGISTRATE JUDGE