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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 GUILLERMO TRUJILLO,

12 Plaintiff,

13 vs.

14 C/O RUIZ, et al.,

15 Defendants.
16

1:14-cv-00975-GSA-PC

ORDER DENYING MOTION TO FILE
PROPOSED SECOND AMENDED
COMPLAINT
(Doc. 19.)

17 **I. BACKGROUND**

18 Guillermo Trujillo ("Plaintiff") is a state prisoner proceeding pro se and in forma
19 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
20 commencing this action on June 23, 2014. (Doc. 1.) On August 22, 2014 and September 2,
21 2014, Plaintiff consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c).
22 (Docs. 10, 11.) On November 9, 2014, the court issued an order dismissing the Complaint for
23 failure to state a claim, with leave to amend. (Doc. 11.) On December 1, 2014, Plaintiff filed
24 the First Amended Complaint. (Doc. 12.)

25 On February 22, 2015, Plaintiff filed a motion to amend the complaint. (Doc. 13.) On
26 December 30, 2014, the court issued an order denying Plaintiff's motion, without prejudice to
27 renewal of the motion showing evidence of compliance with California's Tort Claims Act.
28 (Doc. 14.)

1 On March 10, 2015, the court erroneously filed and served an order in this case that was
2 meant for another case titled Gonzalez v. Mims. (Doc. 17.) The order dismissed Gregory
3 Gonzalez’s complaint with leave to amend. (Id.) On March 12, 2015, the Clerk entered a
4 notice on the court’s docket disregarding the erroneous order as improperly filed. (Doc. 18.)

5 On March 26, 2015, Plaintiff lodged a proposed Second Amended Complaint. (Doc.
6 19.) The court construes this document as a motion for leave to amend.¹

7 **II. RULE 15(a) – LEAVE TO AMEND**

8 **A. Legal Standard**

9 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the
10 party’s pleading once as a matter of course at any time before a responsive pleading is served.
11 Fed. R. Civ. P. 15(a). Otherwise, a party may amend only by leave of the court or by written
12 consent of the adverse party, and leave shall be freely given when justice so requires. Id. Here,
13 because Plaintiff has already amended the complaint once, Plaintiff requires leave of court to
14 file a Second Amended Complaint.

15 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
16 requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir.
17 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where
18 the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an
19 undue delay in the litigation; or (4) is futile.” Id. The factor of “[u]ndue delay by itself . . . is
20 insufficient to justify denying a motion to amend.” Owens v. Kaiser Foundation Health Plan,
21 Inc., 244 F.3d 708, 712,13 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58
22 (9th Cir. 1999)).

23 **B. Plaintiff’s Motion**

24 Plaintiff seeks to file a Second Amended Complaint. Plaintiff’s proposed Second
25 Amended Complaint names as defendants Correctional Officer (C/O) Ruiz and C/O Boyd,
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27 ¹ The court recognizes that Plaintiff may have submitted the Second Amended Complaint in
28 response to the erroneously-filed order. However, as discussed above, the order did not grant Plaintiff leave to
amend the complaint.

1 officers at the California Substance Abuse Treatment Facility and State Prison in Corcoran,
2 California, when Plaintiff was incarcerated there. Plaintiff alleges that sometime after
3 November 1, 2013, C/O Boyd did an inventory of Plaintiff's personal property. C/O Ruiz
4 returned the property to Plaintiff, with items missing. Plaintiff attempted to file a case in small
5 claims court and submitted a 602 inmate appeal concerning this matter, which was rejected at
6 the first level of review. Plaintiff brings negligence claims against C/O Ruiz and C/O Boyd for
7 the loss of his property.

8 **Property Claims**

9 Prisoners have a protected interest in their personal property. Hansen v. May, 502 F.2d
10 728, 730 (9th Cir. 1974). While an authorized, intentional deprivation of property is actionable
11 under the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532, n.13, 104 S.Ct. 3194
12 (1984) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36, 102 S.Ct. 1148 (1982));
13 Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985), "[a]n unauthorized intentional deprivation
14 of property by a state employee does not constitute a violation of the procedural requirements
15 of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation
16 remedy for the loss is available," Hudson, 468 U.S. at 533.

17 California Law provides an adequate post-deprivation remedy for any property
18 deprivations. See Cal. Gov't Code §§ 810-895; Barnett v. Centoni, 31 F.3d 813, 816-17 (9th
19 Cir. 1994). California's Tort Claims Act requires that a tort claim against a public entity or its
20 employees be presented to the California Victim Compensation and Government Claims Board,
21 formerly known as the State Board of Control, no more than six months after the cause of
22 action accrues. Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West 2006).
23 Presentation of a written claim, and action on or rejection of the claim are conditions precedent
24 to suit. State v. Superior Court of Kings County (Bodde), 32 Cal.4th 1234, 1245, 90 P.3d 116,
25 124, 13 Cal.Rptr.3d 534, 543 (2004); Mangold v. California Pub. Utils. Comm'n, 67 F.3d 1470,
26 1477 (9th Cir. 1995). To state a tort claim against a public employee, a plaintiff must allege
27 compliance with the Tort Claims Act. State v. Superior Court, 32 Cal.4th at 1245, 90 P.3d at
28 124, 13 Cal.Rptr.3d at 543; Mangold, 67 F.3d at 1477; Karim-Panahi v. Los Angeles Police

1 Dept., 839 F.2d 621, 627 (9th Cir. 1988).

2 **Discussion**

3 Plaintiff's motion to file the proposed Second Amended Complaint shall be denied. In
4 the court's order of December 30, 2014, Plaintiff was granted leave to renew his motion to
5 amend, "showing evidence of compliance with California's Tort Claims Act." (Doc. 14 at 4.)
6 Plaintiff has not shown any evidence of compliance with California's Tort Claims Act. The
7 proposed Second Amended Complaint fails to state any claims upon which relief may be
8 granted under § 1983, making it futile to allow Plaintiff to file the Second Amended Complaint.
9 This case shall proceed on the First Amended Complaint, filed on December 1, 2014, which
10 shall be screened by the court in due time.

11 **III. CONCLUSION**

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

13 1. Plaintiff's motion to file his proposed Second Amended Complaint, filed on
14 March 26, 2015, is DENIED; and

15 2. Plaintiff's First Amended Complaint, filed on December 1, 2014, shall be
16 screened by the court in due time.

17 IT IS SO ORDERED.
18

19 Dated: **March 30, 2015**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE