

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

MARIO KING,)	Case No.: 1:16-cv-00433-LJO-SAB (PC)
)	
Plaintiff,)	
)	
v.)	ORDER DENYING PLAINTIFF'S MOTION TO
)	AMEND THE COMPLAINT TO ADD A NEW
W.S. WADKINS.,)	DEFENDANT AND NEW CLAIM
)	
Defendant.)	[ECF No. 16]
)	
)	

Plaintiff Mario King is a state prisoner and appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding against Defendant W. S. Wadkins for a due process violation arising out of rules violation report hearing on November 23, 2015.

Currently before the Court is Plaintiff's motion to amend the complaint to add a new defendant and new claim of retaliation, filed August 1, 2016. (Doc. 16.) On August 18, 2016, Defendant Wadkins filed an answer to the complaint. (Doc. 17.)

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1 I.

2 DISCUSSION

3 As an initial matter, although Plaintiff did not attach a copy of the proposed amended
4 complaint as required by Local Rule 137(c),¹ it is clear from the motion to amend that he seeks to add
5 a claim of retaliation in violation of the First Amendment against Defendant J. Barrios. Plaintiff's
6 motion to amend the complaint to add a new claim against an additional defendant implicates both
7 Rules 15 and 20 of the Federal Rules of Civil Procedure. See Desert Empire Bank v. Insurance Co. of
8 North American, 623 F.2d 1371, 1374 (9th Cir. 1980) (petition to amend pleading to add party
9 defendant brings into consideration Rules 15 and 20). Rule 15 provides that a party may amend its
10 pleading once as a matter of right within 21 days after serving it or 21 days after service of a
11 responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is
12 earlier. Fed. R. Civ. P. 15(a)(1)(A)-(B). "In all other cases, a party may amend its pleading only with
13 the opposing party's written consent or the court's leave. The court should freely give leave when
14 justice so requires." Fed. R. Civ. P. 15(a)(2). District courts generally consider four factors in
15 determining whether to deny a motion to amend: "bad faith, undue delay, prejudice to the opposing
16 party, and the futility of amendment." Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994).

17 Rule 20 allows for the permissive joinder of multiple party defendants in one action if two
18 requirements are met: (1) the right to relief asserted against each defendant arises out of the same
19 transaction or occurrence, or series of transactions or occurrences, and (2) a question of law or fact
20 common to all defendants arises in the action. Fed. R. Civ. P. 20(a)(2); Desert Empire Bank, 623 F.2d
21 at 1375 (applying Rule 20(a) to determine that defendant was properly joined). Rule 18 of the Federal
22 Rules of Civil Procedure governs the joinder of claims in a single lawsuit. Rule 18 provides, "[a]
23 party asserting a claim ... may join, as independent or alternate claims, as many claims as it has
24 against an opposing party." Fed. R. Civ. P. 18(a). However, a plaintiff may join multiple claims only
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¹ Local Rule 137(c), provides, in relevant part, "[i]f filing a document requires leave of court, such as an amended
28 complaint after the time to amend as a matter of course has expired, counsel shall attach the document proposed to be filed
as an exhibit to moving papers seeking such leave" Local Rule 137(c).

1 if they are all against a single defendant. Fed. R. Civ. P. 18(b). Thus, multiple claims against a single
2 party may be raised, but unrelated claims against different defendants belong in different actions.

3 Plaintiff's motion to amend to add Defendant J. Barrios based on an unrelated claim of
4 retaliation must be denied as futile because such defendant and claim is not properly joined under Rule
5 20. As previously stated, this action is proceeding against Defendant W. S. Wadkins for a due process
6 violation arising out of a rules violation hearing which took place on November 23, 2015. Plaintiff
7 now seeks to add a retaliation claim against Defendant J. Barrios for an order made by him on June 23,
8 2016 (acting under the direction of Defendant W.S. Wadkins) to relocate Plaintiff's housing placement
9 for an alleged incident involving J. Barrios. Plaintiff contends that J. Barrios (under direction of W.S.
10 Wadkins) took adverse action and falsified the alleged incident involving Barrios in retaliation for the
11 filing of the instant action.

12 Plaintiff's retaliation claim against Defendant J. Barrios is not related to the existing due
13 process claim against Defendant W.S. Wadkins and does not arise out of the same transaction or
14 occurrence or series of transactions or occurrences. "The Ninth Circuit has interpreted the phrase
15 'same transaction, occurrence, or series of transactions or occurrences' to require a degree of factual
16 commonality underlying the claims." Bravado Int'l Group Merchandising Servs. v. Cha, No. CV 09-
17 9066 PSG (CWX), 2010 WL 2650432, at *4 (C.D. Cal. June 30, 2010) (citing Coughlin v. Rogers,
18 130 F.3d 1348, 1350 (9th Cir. 1997)). Plaintiff's new retaliation claim arises several months after the
19 alleged due process violation on November 23, 2015. Although this action is presently proceeding
20 against Defendant W.S. Wadkins, a subsequent unrelated claim of retaliation against a different
21 individual occurring several months later, does not involve the same transaction or occurrence of
22 series of transaction or occurrences. Indeed, Plaintiff's retaliation claim deals with an alleged
23 retaliatory transfer on June 23, 2016 in his housing placement, wholly, unrelated to a procedural due
24 process claim against Defendant Wadkins which took place in November 2015. The Court is mindful
25 of the liberality of Rule 15(a) and the leniency accorded pro se litigants, but the Court may properly
26 deny leave to amend if the proposed amendment is futile, as it is here. See Woods v. City of San
27 Diego, 678 F.3d 1075, 1082 (9th Cir. 2012); Silva v. Di Vittorio, 658 F.3d 1090, 1105-06 (9th Cir.
28 2011); Carrico v. City and County of San Francisco, 656 F.3d 1002, 1008 (9th Cir. 2011). While the

1 Court expresses no opinion as to whether Plaintiff may state a cognizable retaliation claim against
2 Defendant J. Barrios, Plaintiff's motion to amend the complaint in this action violates Rules 18 and 20
3 of the Federal Rules of Civil Procedure by seeking to add an unrelated claim against a new defendant,
4 and amendment is futile.

5 **II.**

6 **ORDER**

7 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motion to amend the
8 complaint is DENIED.

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10 IT IS SO ORDERED.

11 Dated: August 30, 2016

A handwritten signature in blue ink, appearing to read "James A. Be...", is written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE