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

10 ANTHONY CEASAR HERNANDEZ,

11 Plaintiff,

12 v.

13 BALLAM, et al.,

14 Defendants.  
15  
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Case No.: 1:17-cv-00468-BAM (PC)

ORDER DENYING PLAINTIFF’S MOTION  
TO FILE A THIRD AMENDED  
COMPLAINT, WITHOUT PREJUDICE<sup>1</sup>

[ECF No. 22]

17 Plaintiff Anthony Ceasar Hernandez is a state prisoner proceeding *pro se* and *in forma*  
18 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

19 On December 22, 2017, the Court found service of Plaintiff’s second amended complaint  
20 appropriate and directed Plaintiff to submit service documents. (ECF No. 16.) Plaintiff complied,  
21 (ECF No. 17), and on January 12, 2018, the Court directed the United States Marshal to serve the  
22 second amended complaint on Defendants Ballam, Duran, and Perez, (ECF No. 18.) Service  
23 remains underway.

24 Currently before the Court is Plaintiff’s motion to file a third amended complaint, filed  
25 on February 7, 2018. Plaintiff states that he understands service is still being performed in this  
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27 <sup>1</sup> Plaintiff’s motion requests leave to file a second amended complaint, but he has already done so in this  
28 case. It appears this was merely a typographical error and he intends to request leave to file a third  
amended complaint.

1 case, and he has not received any response to his pleading. He further states that he “calls upon”  
2 the rule allowing him to amend his complaint, and requests a blank 1983 packet. Plaintiff further  
3 states that he is without his legal property at this time because he has been housed in Ad-Seg for  
4 safety concerns.

5 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s  
6 pleading once as a matter of course at any time before a responsive pleading is served.

7 Otherwise, a party may amend only by leave of the court or by written consent of the adverse  
8 party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). “Rule 15(a)  
9 is very liberal and leave to amend shall be freely given when justice so requires.”

10 *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006) (citation and  
11 quotation omitted). However, courts “need not grant leave to amend where the amendment: (1)  
12 prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in  
13 litigation; or (4) is futile.” *Id.*

14 Here, Plaintiff has previously been granted opportunities to amend his complaint, and this  
15 action currently proceeds on his second amended complaint. Plaintiff has not explained why or  
16 in what manner he intends to amend his allegations again, nor has he provided any proposed  
17 third amended complaint. Thus, the Court is unable to evaluate the factors relevant to  
18 determining whether leave to amend should be granted here.

19 For these reasons, it is HEREBY ORDERED that Plaintiff’s motion for leave to file a  
20 third amended complaint (ECF No. 22) is denied, without prejudice.

21 IT IS SO ORDERED.

23 Dated: February 11, 2018

23 /s/ Barbara A. McAuliffe  
24 UNITED STATES MAGISTRATE JUDGE