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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

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

ORDER DENYING PLAINTIFF'S SECOND
MOTION TO FILE A THIRD AMENDED
COMPLAINT¹

[ECF No. 22]

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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 This case proceeds on Plaintiff's second amended complaint against Defendant Perez and
20 Defendant Duran for excessive force in violation of the Eighth Amendment, and against
21 Defendant Ballam for the failure to intervene in violation of the Eighth Amendment. (ECF No.
22 15.) Service of the second amended complaint on those Defendants remains underway. (ECF
23 Nos. 18, 21.)

24 On February 7, 2018, Plaintiff filed a motion for leave to file a third amended complaint.
25 (ECF No. 22.) On February 12, 2018, the Court denied Plaintiff's motion, without prejudice, on
26

27 ¹ Plaintiff's motion requests leave to file a second amended complaint, but he has already filed a second
28 amended complaint in this case. It appears this was merely a typographical error, and he intends to
request leave to file a third amended complaint.

1 the basis that that he had not explained why or in what manner he intended to amend his
2 complaint, nor had he provided any proposed third amended complaint for the Court's review.
3 (ECF No. 27.)

4 Currently before the Court is Plaintiff's second motion to file a third amended complaint,
5 filed on March 16, 2018. (ECF No. 31.) Plaintiff asserts that he wishes to amend his allegations
6 that he suffered physical injury and mental anguish. He wishes to add detail to his "mental
7 anguish" allegation to discuss his symptoms, before Defendants file any motion to dismiss on the
8 basis of that allegation.

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

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

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

18 Here, Plaintiff has previously been granted opportunities to amend his complaint, and this
19 action currently proceeds on his second amended complaint. Although no responsive pleading
20 has yet been filed, service of the second amended complaint on the Defendants is underway. The
21 process would be delayed by allowing Plaintiff to amend his pleading again at this stage.

22 More importantly, it is unnecessary for Plaintiff to add additional allegations regarding
23 his symptoms of mental anguish. Compensatory damages under § 1983 may include damages for
24 injuries suffered due to any mental anguish, such as mental and emotional distress, as well as
25 physical injuries. *See Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307, 106 S. Ct. 2537,
26 91 L. Ed. 2d 249 (1986) (compensatory damages are recoverable in § 1983 cases for injuries
27 including "personal humiliation, and mental anguish and suffering."); *Slicker v. Jackson*, 215
28 F.3d 1225, 1231 (11th Cir. 2000) ("In addition to monetary loss or physical pain and suffering,

1 under the law a § 1983 plaintiff also may be awarded compensatory damages based on
2 demonstrated mental and emotional distress, impairment of reputation, and personal
3 humiliation.”). It is not necessary for Plaintiff to amend his pleading, as he has already pleaded
4 physical injury and mental anguish.

5 For these reasons, it is HEREBY ORDERED that Plaintiff’s motion for leave to file a
6 third amended complaint (ECF No. 31) is denied.

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8 IT IS SO ORDERED.

9 Dated: March 19, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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