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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 CHRISTOPHER LIPSEY, JR.,

12 Plaintiff,

13 vs.

14 N. HAND-RONGA, et al.,

15 Defendants.
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1:17-cv-01704-LJO-GSA-PC

ORDER GRANTING LEAVE TO AMEND
THE COMPLAINT

ORDER DIRECTING CLERK TO FILE
THIRD AMENDED COMPLAINT LODGED
ON FEBRUARY 7, 2019
(ECF No. 21.)

21 **I. BACKGROUND**

22 Christopher Lipsey, Jr. (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
23 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
24 commencing this action on December 19, 2017. (ECF No. 1.) On April 9, 2018, Plaintiff filed
25 a First Amended Complaint as a matter of course. (ECF No. 12.) On September 24, 2018, the
26 court issued a screening order dismissing the First Amended Complaint for failure to state a
27 claim, with leave to file a Second Amended Complaint within thirty days. (ECF No. 15.) On
28 December 3, 2018, Plaintiff filed a Second Amended Complaint. (ECF No. 18.)

1 On February 7, 2019, Plaintiff lodged a proposed Third Amended Complaint. (ECF No.
2 21.) The court construes Plaintiff's lodged complaint as a request for leave to amend.

3 **II. LEAVE TO AMEND – RULE 15(a)**

4 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party's
5 pleading once as a matter of course at any time before a responsive pleading is served. Fed. R.
6 Civ. P. 15(a). Otherwise, a party may amend only by leave of the court or by written consent of
7 the adverse party, and leave shall be freely given when justice so requires. *Id.* Here, because
8 Plaintiff has already amended the complaint more than once and no other parties have appeared,
9 Plaintiff requires leave of court to file a Third Amended Complaint.

10 "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so
11 requires.'" *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 445 F.3d 1132, 1136 (9th Cir. 2006)
12 (quoting Fed. R. Civ. P. 15(a)). However, courts "need not grant leave to amend where the
13 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
14 delay in the litigation; or (4) is futile." *Id.* The factor of "[u]ndue delay by itself . . . is
15 insufficient to justify denying a motion to amend." *Owens v. Kaiser Foundation Health Plan,*
16 *Inc.*, 244 F.3d 708, 712, 713 (9th Cir. 2001) (quoting *Bowles v. Reade*, 198 F.3d 752, 757-58
17 (9th Cir. 1999)).

18 **Discussion**

19 The court finds no bad faith or futility in Plaintiff's proposed amendment. The proposed
20 Third Amended Complaint arises from the same events at issue in the original Complaint for this
21 action. Because the Second Amended Complaint awaits the court's requisite screening and has
22 not been served, there will be no undue delay or prejudice to Defendants in allowing Plaintiff to
23 proceed with the Third Amended Complaint. Therefore, Plaintiff shall be granted leave to
24 amend, and the Third Amended Complaint shall be filed.

25 **III. CONCLUSION**

26 Based on the foregoing, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff is granted leave to amend the complaint;

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- 2. The Clerk is directed to file the proposed Third Amended Complaint, which was lodged on February 7, 2019; and
- 3. The Third Amended Complaint shall be screened in due time.

IT IS SO ORDERED.

Dated: February 12, 2019

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE