

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 CHRISTOPHER LIPSEY, JR.,

12 Plaintiff,

13 vs.

14 N. HAND-RONGA, et al.,

15 Defendants.
16
17
18

1:17-cv-01704-LJO-GSA-PC

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS ENTERED ON
AUGUST 7, 2019
(ECF No. 28.)**

**ORDER GRANTING PLAINTIFF LEAVE
TO AMEND AND DIRECTING CLERK
TO FILE FOURTH AMENDED
COMPLAINT LODGED ON AUGUST 26,
2019
(ECF No. 30.)**

19 **I. BACKGROUND**

20 Christopher Lipsey, Jr. (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
21 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
22 commencing this action on December 19, 2017. (ECF No. 1.) On April 9, 2018, Plaintiff filed
23 the First Amended Complaint as a matter of course. (ECF No. 12.)

24 On September 24, 2018, the court dismissed the First Amended Complaint for failure to
25 state a claim, with leave to amend. (ECF No. 15.) On December 3, 2018, Plaintiff filed the
26 Second Amended Complaint. (ECF No. 18.) On February 7, 2019, Plaintiff lodged a proposed
27 Third Amended Complaint which the court construed as a request for leave to amend. (ECF No.
28

1 21.) On February 13, 2019, the court granted Plaintiff leave to amend and the Third Amended
2 Complaint was filed previously on February 12, 2019. (ECF Nos. 22, 23.)

3 On August 7, 2019, the court screened the Third Amended Complaint and entered
4 findings and recommendations, recommending that this case be dismissed for Plaintiff's failure
5 to state a claim. (ECF No. 28.) On August 26, 2019, Plaintiff filed objections to the findings
6 and recommendations and lodged a proposed Fourth Amended Complaint, which the court
7 construes as a request for leave to amend. (ECF Nos. 29, 30.)

8 Plaintiff's request for leave to amend the complaint is now before the court. 28 U.S.C.
9 1915A.

10 **II. LEAVE TO AMEND – RULE 15(a)**

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

17 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
18 requires.’” *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 445 F.3d 1132, 1136 (9th Cir. 2006)
19 (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the
20 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
21 delay in the litigation; or (4) is futile.” *Id.* The factor of “[u]ndue delay by itself . . . is
22 insufficient to justify denying a motion to amend.” *Owens v. Kaiser Foundation Health Plan,*
23 *Inc.*, 244 F.3d 708, 712, 713 (9th Cir. 2001) (quoting *Bowles v. Reade*, 198 F.3d 752, 757-58
24 (9th Cir. 1999)).

25 **Discussion**

26 The court finds no bad faith or futility in Plaintiff's proposed amendment. The proposed
27 Fourth Amended Complaint arises from the same events at issue in the Third Amended
28 Complaint for this action, but it appears that Plaintiff has added more factual allegations.

1 Allowing Plaintiff to file the Fourth Amended Complaint at this stage of the proceedings will not
2 cause undue delay or prejudice to Defendants. Therefore, Plaintiff shall be granted leave to
3 amend, and the Fourth Amended Complaint shall be filed.

4 In light of this ruling, the court shall vacate its findings and recommendations entered on
5 August 7, 2019. The Fourth Amended Complaint shall be screened in due course.

6 **III. CONCLUSION**

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

- 8 1. Plaintiff is granted leave to amend the complaint;
- 9 2. The Clerk is directed to file the proposed Fourth Amended Complaint, which was
10 lodged on August 26, 2019 (ECF No. 30);
- 11 3. The findings and recommendations entered on August 7, 2019, are vacated; and
- 12 4. The Fourth Amended Complaint shall be screened in due course.

13
14 IT IS SO ORDERED.

15 Dated: September 16, 2019

16 /s/ Gary S. Austin
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28