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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 JAMES EDWARD WALLACE,

11 Plaintiff,

12 v.

13 COSPER, et al.,

14 Defendants.
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Case No. 1:21-cv-01275-KES-EPG

ORDER GRANTING MOTION FOR
LEAVE TO FILE THIRD AMENDED
COMPLAINT

(ECF No. 70)

16 Plaintiff James Edward Wallace proceeds *in forma pauperis* and with counsel in this
17 civil rights action. This matter is before the Court on Plaintiff's motion for leave to file a third
18 amended complaint, filed on December 13, 2024. (ECF No. 70). As stated in the motion,

19 [t]he proposed amendment seeks to add 2 new defendants: the City of Lemoore
20 and Chief Darrell Smith (but only to the relevant proposed new causes of
21 action), and to allege 5 new causes of action (against all defendants as
22 applicable) based on the Plaintiff's recent acquittal from criminal charges related
23 to this lawsuit's underlying facts.

24 (*Id.* at 2). Elsewhere, Plaintiff lists the following causes of action to be added as follows: "First
25 Amendment Retaliation and Fourth Amendment Malicious Prosecution against the currently
26 named defendants, and California common law Malicious Prosecution, California Constitution
27 Article I, Section 13 violations and Negligence against all defendants, including the proposed
28 defendants." (*Id.* at 12).

No Defendant has timely opposed the motion under the Court's Local Rules, and the
"failure to file a timely opposition may . . . be construed by the Court as a nonopposition to the

1 motion.” Local Rule 230(c).

2 Under Rule 15(a), a party may amend a pleading once as a matter of course within
3 twenty-one days of service, or if the pleading is one to which a response is required, twenty-one
4 days after service of a motion under Rule 12(b), (e), or (f). Fed. R. Civ. P. 15(a)(1)(B). “In all
5 other cases, a party may amend its pleading only with the opposing party’s written consent or
6 the court’s leave.” Fed. R. Civ. P. 15(a)(2).

7 Granting or denying leave to amend is in the discretion of the Court. *Swanson v. United*
8 *States Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996). Leave should be “freely give[n] . . .
9 when justice so requires,” Fed. R. Civ. P. 15(a)(2). “In exercising this discretion, a court must
10 be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather than
11 on the pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).
12 Consequently, the policy favoring the grant of leave to amend is applied with “extreme
13 liberality.” *Id.* (citation omitted). “Five factors are taken into account to assess the propriety of
14 a motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of
15 the amendment, and whether the plaintiff has previously amended the complaint.” *Desertrain v.*
16 *City of L.A.*, 754 F.3d 1147, 1154 (9th Cir. 2014) (quoting *Johnson v. Buckley*, 356 F.3d 1067,
17 1077 (9th Cir.2004)).

18 With these standards in mind, the Court will grant Plaintiff leave to file a third amended
19 complaint. There is no indication of bad faith or undue delay. While Plaintiff has previously
20 amended the complaint, Plaintiff only recently learned of the basis for the new claims
21 following Plaintiff’s acquittal of criminal charges relating to the incident at issue in this case.
22 Additionally, no Defendant has argued that amendment will be prejudicial, nor does prejudice
23 appear to be implicated based on the circumstances of the case. Lastly, the newly alleged
24 claims do not appear to be futile.

25 Accordingly, IT IS ORDERED as follows:

- 26 1. Plaintiff’s motion for leave to file a third amended complaint (ECF No. 70) is
27 granted.
- 28 2. Plaintiff shall file a copy of the proposed third amended complaint (ECF No. 70-

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2) within seven (7) days of the entry of this order.

3. The Clerk of Court shall list the City of Lemoore and Chief Darrell Smith as Defendants on the docket.

4. Defendants shall respond to the third amended complaint (once filed) within the time provided under the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 15(a).

IT IS SO ORDERED.

Dated: January 6, 2025

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE