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8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

10   MICHAEL A. HUNT,

11   Plaintiff,   No. CIV S-08-0181 MCE KJM P

12   vs.

13   R. RIOS, et al.,

14   Defendants.   ORDER
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16   Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action

17   under 42 U.S.C. § 1983. He has filed a motion to amend his complaint and a motion to

18   consolidate this case with another case before the court, CIV S-09-3525 FCD GGH P.

19   Defendants have not responded to either motion; therefore the court considers them unopposed.

20   Federal Rule of Civil Procedure 15(a) provides that leave to amend a complaint

21   should be "freely given when justice so requires." The Ninth Circuit has construed this

22   provision broadly, adding that leave to amend should be granted with "extraordinary liberality."

23   Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990); see also Poling

24   v. Morgan, 829 F.2d 882, 886 (9th Cir. 1987) (describing a "strong policy permitting

25   amendment"). However, the Supreme Court has stated that a court may decline to grant leave

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where there is "any apparent or declared reason" for doing so. Foman v. Davis, 371 U.S. 178,

182 (1962).

The Ninth Circuit has interpreted Foman as identifying "four factors relevant to

whether a motion for leave to amend the pleadings should be denied: undue delay, bad faith or

dilatory motive, futility of amendment, and prejudice to the opposing party." United States v.

Webb, 655 F.2d 977, 980 (9th Cir. 1981). These factors do not carry equal weight. "[D]elay

alone no matter how lengthy is an insufficient ground for denial of leave to amend." Id. at 980.

"Prejudice to the opposing party is the most important factor." Jackson v. Bank of Hawai'i, 902

F.2d 1385, 1387 (9th Cir. 1990). "Absent prejudice, or a strong showing of any of the remaining

Foman factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend."

Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). Futility of an

amendment can, standing alone, justify denial of the amendment. See Bonin v. Calderon, 59

F.3d 815, 845 (9th Cir.1995).

The court finds that the motion to amend the complaint should be granted. First,

defendants have not opposed the motion, so there has been no showing of prejudice should the

proposed amended complaint be accepted, nor is any prejudice apparent to the court on its own

review of the new pleading. Plaintiff states in his motion that the purpose of the amended

complaint is to make factual corrections to the operative complaint and to simplify his legal

allegations. Indeed, upon review, the court finds no new allegations that change the gravamen of

plaintiff's complaint against defendants. Moreover, because it brings no substantively different

allegations or causes of action to this case, the court's screening analysis of the operative

complaint under 28 U.S.C. § 1915A applies with equal force to the proposed, amended

complaint. The second amended complaint, filed May 21, 2010, shall therefore be accepted.

Plaintiff's request to consolidate this case with his other action, CIV S-09-3525

FCD GGH P, is not well taken. Both cases contain similar allegations of retaliation against the

same defendants, but the events in question in this case are distinct from the events in question in

1 plaintiff's other case. The court has already drawn that distinction in denying plaintiff's earlier

2 attempt to amend his complaint to add the allegations made in CIV S-09-3525 FCD GGH P.

3 See Order (Docket No. 28) at 4-5. Plaintiff presents nothing to cause the court to revisit that

4 ruling now.

5   Accordingly, IT IS HEREBY ORDERED that:

6   1. The motion to amend the complaint (Docket No. 35) is granted. The second

7 amended complaint is deemed filed as of May 21, 2010.

8   2. The motion to consolidate (Docket No. 34) is denied.

9 DATED: December 3, 2010.

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    U.S. MAGISTRATE JUDGE
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