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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW RAMIREZ,

Plaintiff,

No. 2: 11-cv-0045 KJN P

vs.

D. SWINGLE, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s March 1, 2012 motion to amend. Defendants did not file an opposition to this motion. Nevertheless, for the following reasons, this motion is denied.

After a party has amended a complaint once, the party may only amend further after gaining consent from the adverse party or leave from the court. Eminence Capital, L.L. C. v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). The court should freely give leave to amend “when justice so requires.” Fed.R.Civ.P. 15(a)(2). Whether to grant a motion to amend depends on the following factors: (1) undue delay, (2) bad faith, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether plaintiff has previously amended his complaint. Western Shoshone Nat. Council v. Molini, 951 F.2d 200, 204 (9th Cir. 1991).

1           This action is proceeding on the original complaint filed January 5, 2011, as to  
2 defendants Medina and Swingle. Plaintiff alleges that he received inadequate medical care for  
3 diabetes, physical therapy and pain.

4           On June 9, 2011, the court issued a scheduling order setting the pretrial motion  
5 deadline as December 23, 2011. On December 21, 2011, defendants filed a motion for an  
6 extension of time to file a summary judgment motion. On January 3, 2011, the undersigned  
7 granted defendants' motion and ordered their summary judgment motion due on or before  
8 February 6, 2012. On February 6, 2012, defendants filed a summary judgment motion.

9           In the proposed amended complaint filed March 1, 2012, plaintiff seeks to add  
10 new defendants, although plaintiff does not clearly identify the proposed new defendants.  
11 Plaintiff also seeks to include new claims regarding denial of breathing treatments.

12           As discussed above, the original pretrial motion deadline was December 23, 2011.  
13 Defendants' summary judgment motion is pending. Under these circumstances, granting  
14 plaintiff's motion to amend would significantly delay resolution of this action as it would require  
15 service as to some or all of the proposed new defendants as well as reopening discovery and  
16 setting a new pretrial motion deadline. While plaintiff's motion to amend is not made in bad  
17 faith, both defendants and the court would be prejudiced by the delay in resolution of this action  
18 were plaintiff's motion granted. Although the proposed amendments are not necessarily futile  
19 and plaintiff has not previously amended his complaint, the significant prejudice to both the court  
20 and defendants in granting the motion outweighs any factors in favor of granting the motion. For  
21 these reasons, plaintiff's motion to amend is denied.

22           Plaintiff has not opposed defendants' summary judgment motion. However, on  
23 March 19, 2012, plaintiff filed a motion for a forty-five day extension of time to file his  
24 opposition. Plaintiff alleges that he could not prepare a timely opposition because High Desert  
25 State Prison has been on lockdown. Good cause appearing, plaintiff's motion for extension of  
26 time is granted.

