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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH LAVERY,
Plaintiff,
v.
B. DHILLON et al.,
Defendants.

No. 2:13-cv-2083 MCE AC P

ORDER

Plaintiff is a state prisoner who, represented by counsel, is proceeding with a civil rights action pursuant to 42 U.S.C. § 1983. On March 23, 2017, defendants filed two motions to dismiss – one on behalf of defendant Dhillon and another on behalf of the remaining defendants. ECF Nos. 124 & 125. A hearing for these motions was set for May 17, 2017. ECF No. 128. On April 29, 2017, however, plaintiff’s counsel filed a motion to amend complaint (ECF No. 129) and a statement of non-opposition to defendants’ pending motions (ECF No. 130).

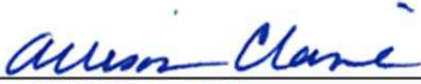
In light of plaintiff’s non-opposition, the court will summarily grant defendants’ motions to dismiss. The court also grants plaintiff’s motion to amend and gives him leave to submit a second amended complaint within thirty days of this order’s entry. See Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc., 911 F.2d 242, 247 (9th Cir. 1990) (holding that, where a court dismisses for failure to state a claim, leave to amend should be granted unless the court “determines that the pleading could not possibly be cured by the allegation of other facts.”).

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IT IS THEREFORE ORDERED that:

1. Defendants' motions to dismiss (ECF Nos. 124 & 125) are summarily GRANTED and plaintiff's first amended complaint (ECF No. 30) is DISMISSED without prejudice.
2. Plaintiff's motion to amend complaint (ECF No. 129) is GRANTED. Plaintiff should file his second amended complaint within thirty days of this order's entry.
3. The motions hearing scheduled for May 17, 2017 is vacated.

DATED: May 1, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE