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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

H. DYMITRI HARASZEWSKI,  
Plaintiff,  
v.  
KNIPP, et al.,  
Defendants.

No. 2:13-cv-2494 AC (TEMP) P

ORDER

Plaintiff is proceeding pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. By order filed December 16, 2015, the court screened plaintiff’s first amended complaint; found service appropriate for defendants Casagrande, Garcia and Reese on a First Amendment retaliation claim; and directed plaintiff to file documents necessary to effectuate service. Plaintiff was also informed of his right to file a second amended complaint. Plaintiff now moves to file an amended pleading. (ECF No. 20.)

Pursuant to Federal Rule of Civil Procedure 15(a)(2), courts should “freely give leave when justice so requires,” and the Ninth Circuit has noted that the policy is one “to be applied with extreme liberality,” Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990). In exercising its discretion to permit or deny a party to amend its pleading, this court considers five factors: (1) whether the amendment was filed with undue delay; (2) whether the movant has requested the amendment in bad faith or as a dilatory tactic; (3) whether the movant


1 was allowed to make previous amendments which failed to correct deficiencies of the complaint;  
2 (4) whether the amendment will unduly prejudice the opposing party; and (5) whether the  
3 amendment would be futile. Foman v. Davis, 371 U.S. 178, 182 (1962).

4 Here, plaintiff moves to amend his pleading so that he can better allege facts sufficient to  
5 state a First Amendment mail tampering claim. Though plaintiff has previously been granted  
6 leave to amend, nothing in the record supports the conclusion that plaintiff acted in bad faith in  
7 filing the instant motion. Nor does it appear that amendment will necessarily be futile. Finally,  
8 the court finds no prejudice to the defendants, since service has not yet been ordered on them.  
9 Plaintiff's motion will therefore be granted.

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

- 11 1. Plaintiff's request for leave to amend (ECF No. 20) is granted; and
- 12 2. Plaintiff shall file a second amended complaint within thirty days from the date of this  
13 order.

14 DATED: June 3, 2016

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16 ALLISON CLAIRE  
17 UNITED STATES MAGISTRATE JUDGE  
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