

1 A court should freely grant leave to amend a pleading when justice so requires. Fed. R.
2 Civ. P. 15(a)(2). “Leave to amend should be granted unless the pleading ‘could not possibly be
3 cured by the allegation of other facts,’ and should be granted more liberally to pro se plaintiffs.”
4 Ramirez v. Galaza, 334 F.3d 850, 861 (9th Cir. 2003) (citing Lopez v. Smith, 203 F.3d 1130,
5 1131 (9th Cir. 2000) (en banc)), cert. denied, 541 U.S. 1063 (2004). Facts alleged in an amended
6 complaint “must not be inconsistent with those already alleged.” Lacey v. Maricopa County, 693
7 F.3d 896, 939 (9th Cir. 2012) (en banc). “Liberality in granting a plaintiff leave to amend is
8 subject to the qualification that the amendment not cause undue prejudice to the defendant, is not
9 sought in bad faith, and is not futile. Additionally, the district court may consider the factor of
10 undue delay.” Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999) (citations omitted).

11 The undersigned finds that plaintiff’s motion is brought in good faith, without undue delay
12 or undue prejudice to defendants, that the facts alleged in the TAC are not inconsistent with those
13 in the SAC, and that the addition of the newly added defendant is essential to resolving the merits
14 of this case. Therefore, plaintiff’s motion will be granted, and this case will now proceed on the
15 TAC.

16 II. Discovery and Motion Deadlines

17 The last amended discovery and scheduling order set the following deadlines: January 31,
18 2020 for the close of discovery, and May 29, 2020, for the filing of dispositive motions. Because
19 plaintiff has only recently been informed of the identity of “Nurse L,” who was present at the
20 incident challenged in this case, it appears that limited additional discovery may be warranted.
21 The parties will be directed to file and serve, within thirty (30) days, a statement indicating
22 whether they require additional discovery and, if so, a description of that discovery and from
23 whom it is sought, and the estimated length of time to obtain it. Thereafter the court will consider
24 whether to extend one or more deadlines in this case, if only for a limited purpose.

25 III. Plaintiff’s Motion to Strike and for Sanctions

26 Plaintiff moves to strike the declaration of Correctional Counselor (CC) Johnson, North
27 Kern State Prison Litigation Coordinator, which was submitted by the specially-appearing Deputy
28 Attorney General in response to the court’s request for information about CDCR’s initial refusal

1 to permit plaintiff to view a DVD produced to him in discovery. See ECF No. 119-1. Plaintiff
2 contends that the facts alleged in Johnson’s declaration proved false, as plaintiff had initially
3 asserted (ECF No. 121), and as demonstrated by CDCR later making the DVD available to
4 plaintiff. Plaintiff asks this court to admonish Johnson, strike his declaration, and impose both “a
5 nominal fine for contempt of court” and “a substantial sanction for perjury.” ECF No. 130.

6 Plaintiff’s motion will be denied in its entirety. Neither CDCR nor Johnson are
7 defendants in this action, and there is no indication that Johnson acted in bad faith. Plaintiff even
8 concedes that, “[f]or the record Johnson has only been in litigation for a year in training.” ECF
9 No. 121 at 4. Moreover, the declaration was submitted in response to the court’s request for
10 information necessary to resolve plaintiff’s motion to compel discovery. That dispute has been
11 resolved in plaintiff’s favor and is now moot. The undersigned finds no grounds for admonishing
12 or otherwise sanctioning nondefendant Johnson.

13 Finally, in light of defendants’ compliance with the court’s rulings at the March 11, 2020
14 hearing, with the cooperation of CDCR, ECF No. 129, the court will deny as moot plaintiff’s
15 prior related discovery motions, ECF Nos. 117, 120.

16 IV. Conclusion

17 For the foregoing reasons, IT IS HEREBY ORDERED that:

18 1. Plaintiff’s motion for leave to proceed on his proposed Third Amended Complaint,
19 ECF No. 131, is granted.

20 2. This action shall now proceed on the Third Amended Complaint (TAC) at ECF No.
21 132.

22 3. Counsel for newly identified defendant LVN Leah Wong shall file and serve a waiver
23 of service of the TAC for Wong within thirty (30) days after the filing date of this order.

24 4. Defendants shall file and serve their answers to the TAC within thirty (30) days after
25 the filing date of this order.

26 5. Plaintiff and counsel for both groups of defendants shall, within thirty (30) days after
27 the filing date of this order, separately file and serve a statement indicating whether they require

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1 additional discovery and, if so, a description of that discovery, from whom, and the estimated
2 length of time to propound it and receive responses.

3 6. In light of defendants' compliance with the court's rulings at the March 11, 2020
4 hearing, ECF No. 129, plaintiff's earlier related motions, ECF Nos. 117, 120, are denied as moot.

5 7. Plaintiff's motion to strike the declaration of CC Johnson and for sanctions, ECF No.
6 130, is denied.

7 DATED: April 15, 2020

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9 ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE

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