

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE R. GOVEA,
Plaintiff,
v.
ROBERT W. FOX, et al.,
Defendants.

No. 2:15-cv-2545 MCE DB P

ORDER

Plaintiff is a state prisoner formerly proceeding pro se with a civil rights action under 42 U.S.C. § 1983. This action proceeds on plaintiff’s second amended complaint. (ECF No. 18.) Plaintiff claims defendants failed to provide him with adequate medical treatment in violation of the Eighth Amendment. Presently before the court is plaintiff’s request for leave to file an amended complaint (ECF No. 46) and defendants’ oppositions (ECF Nos. 47, 50). For the reasons set forth below, the court will deny the request without prejudice.

On August 1, 2019, a notice was filed indicating that counsel agreed to represent plaintiff in this action. (ECF No. 46.) Additionally, counsel for plaintiff requested leave to file an amended complaint. The request did not contain a proposed amended complaint or indicate the reason for amendment. Defendants Bick, Fox, Lewis, and Rading filed an opposition to plaintiff’s request for leave to file an amended complaint. (ECF No. 47.) Defendant Wolfson is separately

////

1 represented and has also filed an opposition to plaintiff's request to amend. (ECF No. 50.)
2 Defendant Clark has not yet been served in this action.¹

3 Pursuant to Federal Rule of Civil Procedure 15, a plaintiff may amend his complaint once as
4 a matter of course within twenty-one days after serving it or twenty-one days after service of a
5 responsive pleading or motion pursuant to Rule 12(b). In all other cases, a plaintiff may amend
6 his complaint with defendant's written consent or the court's leave. Fed. R. Civ. P. 15. "Rule
7 15(a) is very liberal and leave to amend shall be freely given when justice so requires."
8 AmerisourceBergen Corp. v. Dialysist West, Inc., 465 F.3d 946, 951 (9th Cir. 2006) (quotation
9 omitted); see also Fed. R. Civ. P. 15(a) ("The court should freely give leave when justice so
10 requires."). However, courts "need not grant leave to amend where the amendment: (1)
11 prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the
12 litigation; or (4) is futile." Id. The "court's discretion to deny leave to amend is particularly
13 broad where the court has already given the plaintiff an opportunity to amend his complaint."
14 Fidelity Financial Corp. v. Federal Home Loan Bank of San Francisco, 792 F.2d 1432, 1438 (9th
15 Cir. 1986).

16 Defendants argue that under Federal Rule of Civil Procedure 15(a), plaintiff is required to
17 obtain permission before filing an amended complaint because more than twenty-one days have
18 passed since defendants were served. (ECF No. 47 at 2-3; ECF No. 50 at 2-3.) Defendants have
19 also argued that plaintiff's request fails to comply with Local Rule 137(c), which requires him to
20 file a copy of the proposed amended complaint attached as an exhibit to any motion to amend.
21 (ECF No. 47 at 4; ECF No. 50 at 4.) Defendants further stated that plaintiff has not indicated
22 why justice requires amendment or whether he intends to seek different forms of relief, allege
23 new or different facts, add defendants, or raise new causes of action. (ECF No. 47 at 4; ECF No.
24 50 at 4.)

25 ///

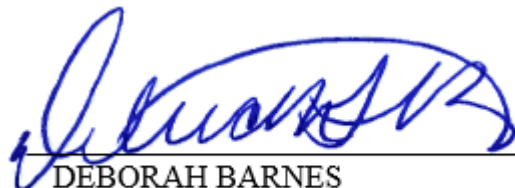
26 ///

27 ¹ By order dated June 24, 2019, the court granted plaintiff an additional 30 days to submit the
28 documents to effect service on defendant Clark. (ECF No. 35.)

1 Because plaintiff has failed to comply with Federal Rule of Civil Procedure 15(a) and Local
2 Rule 137(c) the court will deny plaintiff's request without prejudice to its renewal. However, any
3 motion to amend should comply with the Federal Rules of Civil Procedure and the local rules.

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's request to amend the complaint
5 (ECF No. 46) is denied without prejudice.

6 Dated: August 19, 2019

7
8 
9 _____
10 DEBORAH BARNES
11 UNITED STATES MAGISTRATE JUDGE

12
13 DLB:12
14 DLB:1/Orders/prisoner-civil rights/gove2545.Am'd.Appr

15
16
17
18
19
20
21
22
23
24
25
26
27
28