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E-FILED - 9/11/08

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

BARTOLO MULLEN,)	No. C 03-3676 RMW (PR)
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR LEAVE TO AMEND
v.)	(Docket No. 73)
)	
STEPHEN SURTSHIN, et al.,)	
)	
Defendants.)	

Plaintiff, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Napa State Hospital and its staff concerning the conditions of his confinement. The court served plaintiff's second amended complaint on named defendants. Plaintiff has filed a motion for leave to amend his complaint, certify cases as a class action, appoint counsel, and hold his pleadings to less stringent standards (docket no. 73). For the reasons stated below, the court will DENY without prejudice plaintiff's request to amend his complaint, deny his request to certify cases as a class action, deny his request to appoint counsel, and grant his request to hold his pleadings to less stringent standards.

DISCUSSION

Plaintiff's motion requests leave to amend his complaint for a third time in light of defendants' pending motion to dismiss, however, it is unclear how plaintiff wishes to amend his

1 complaint. Federal Rule of Civil Procedure 15(a) provides that leave to amend “shall be freely
2 given when justice so requires” but the court cannot make that determination without seeing the
3 proposed new pleading. See Lake v. Arnold, 232 F.3d 360, 374 (3d Cir. 2000) (“Obviously,
4 without this draft complaint, the District Court cannot evaluate the merits of a plaintiff’s request .
5 . . [T]he court had nothing upon which to exercise its discretion.”).

6 Further, plaintiff should be cognizant that leave to amend need not be granted where the
7 amendment of the complaint would cause the opposing party undue prejudice, is sought in bad
8 faith, constitutes an exercise in futility, or creates undue delay. See Janicki Logging Co. v.
9 Mateer, 42 F.3d 561, 566 (9th Cir. 1994) (quotations omitted). Further, the court’s discretion to
10 deny leave to amend is particularly broad where the plaintiff has previously filed an amended
11 complaint. Wagh v. Metris Direct, Inc., 363 F.3d 821, 830 (9th Cir. 2003).

12 The motion for leave to amend is DENIED without prejudice. Should plaintiff choose to
13 file a motion to amend with a proposed third amended complaint, he shall do so within thirty
14 days of the date this order is filed.

15 CONCLUSION

16 1. Plaintiff’s request to amend his complaint is DENIED without prejudice. Plaintiff
17 may file and serve a new motion to amend, provided that it is accompanied by a proposed
18 amended petition and is filed and served no later than **thirty days** from the date this order is
19 filed.

20 Plaintiff is also reminded that his oppositions to defendants’ motions to dismiss are due
21 thirty days after the file date of the motions. In light of this order, the court sua sponte extends
22 the time to file his oppositions to those motions to be filed and served no later than **thirty days**
23 from the date this order is filed.

24 2. Plaintiff’s request for class certification is DENIED for the reasons already stated
25 in the court’s October 18, 2008 order.

26 3. Plaintiff’s request for the court to appoint counsel is DENIED without prejudice
27 for the reasons already stated in the court’s October 18, 2008 order.

28 4. Plaintiff’s request for the court to hold his pleadings to a less stringent standard is

1 GRANTED for the reasons already stated in the court's June 3, 2008 order.

2 5. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
3 court informed of any change of address by filing a separate paper captioned "Notice of Change
4 of Address." He must comply with the court's orders in a timely fashion. Failure to do so may
5 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
6 Procedure 41(b).

7 This terminates docket no. 73.

8 IT IS SO ORDERED.

9 DATED: 9/10/08



RONALD M. WHYTE
United States District Judge