UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KEVIN DARNELL BRYANT,

Plaintiff,

v.

SELEAINA ANN THOMAS, Nurse Practitioner; MARTIN LEVIN, CMO; VROOMAN, MTA; SEPULVEDA, Nurse; EDWARDS, Appeals Coordinator; and L.E. SCRIBNER, Warden,

Defendants.

Civil No. 09cv1334-WQH-MDD

ORDER

HAYES, Judge:

On April 11, 2011, United States Magistrate Judge Nita L. Stormes issued a Report and Recommendation (ECF No. 44) recommending that the Court grant in part and deny in part the Motion for Leave to File First Amended Complaint filed by Plaintiff Kevin Darnell Bryant, a prisoner currently incarcerated at Kern Valley State Prison in Delano, California, proceeding *pro se* and *in forma pauperis* (ECF No. 39). The Report and Recommendation provides that any objections to the Report and Recommendation must be filed no later than May 2, 2011, and any replies must be filed no later than May 13, 2011.

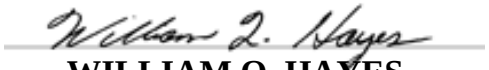
The docket reflects that no objections or replies have been filed.

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the Court has reviewed the Report and Recommendation and the Motion for Leave to File First Amended Complaint.

The Magistrate Judge correctly set forward the legal standard for considering a motion for leave to amend a complaint pursuant to Federal Rule of Civil Procedure 15(a). *See DCD Programs Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) ("Rule 15's policy of favoring amendments to pleadings should be applied with extreme liberality.") (quotation omitted); *see also Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) ("In assessing the propriety of a motion for leave to amend, we consider factors such as bad faith, undue delay, prejudice to the opposing party, and the futility of amendment.") (citation omitted). The Magistrate Judge correctly applied this standard to find that the Motion for Leave to File First Amended Complaint should be granted as to all claims against Defendants Thomas, Vrooman and Sepulveda and denied as to all claims against Defendants Levin, Scribner, Szerrenyl and proposed defendant Sellen. To the extent Plaintiff seeks to reallege claims against Defendant James Tilton, former Director of the California Department of Corrections, the Motion for Leave to File First Amended Complaint is denied for the reasons stated in the Court's November 9, 2009 Order. (ECF No. 16 at 6).

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 44) is ADOPTED in its entirety, and the Motion for Leave to File First Amended Complaint is GRANTED as to all claims against Defendants Thomas, Vrooman and Sepulveda and DENIED as to all claims against Defendants Levin, Scribner, Szerrenyl, Tilton and proposed defendant Sellen. The Clerk of the Court shall file the proposed First Amended Complaint attached to the Motion for Leave to File First Amended Complaint (including all subsequent attachments) (ECF No. 39-1 through ECF No. 39-6) as a separate docket entry. Once filed, the First Amended Complaint will be the operative pleading in this action, and only Defendants Thomas, Vrooman and Sepulveda shall remain as active Defendants. Defendants Thomas, Vrooman and Sepulveda shall respond to the First Amended Complaint within the time allowed by the applicable rules.

DATED: May 23, 2011



WILLIAM Q. HAYES
United States District Judge