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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 BOBBY AUSTIN,
12 Plaintiff,
13 v.
14 SAN DIEGO STATE UNIVERSITY,
15 Defendant.

Case No.: 15-cv-1930-GPC-BLM

**ORDER DENYING AS MOOT
PLAINTIFF'S MOTION FOR
LEAVE TO FILE A SECOND
AMENDED COMPLAINT**

[ECF No. 13]

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17 Plaintiff Bobby Austin, proceeding pro se, asserts an employment discrimination
18 claim under Title VII of the Civil Rights Act of 1964 against Defendant San Diego State
19 University ("SDSU"). (First Amended Complaint ("FAC"), ECF No. 11.) Before the
20 Court is Plaintiff's motion for leave to file a Second Amended Complaint ("SAC"). (ECF
21 No. 13.) For the reasons discussed below, the Court **DENIES AS MOOT** Plaintiff's
22 motion.

23 **PROCEDURAL HISTORY**

24 On September 1, 2015, Plaintiff filed his initial Complaint against SDSU. (ECF No.
25 1.) On October 6, 2015, summons was returned executed. (ECF No. 3.) A process server
26 executed service on a "Nancy Demich Analyst," on the SDSU campus on September 3,
27 2015. (*Id.*) On October 14, 2015, default was entered against SDSU for failure to answer
28 or otherwise timely respond to the complaint. (*See* ECF Nos. 5, 6.) On October 20, 2015,

1 Plaintiff filed a motion for default judgment. (ECF No. 8.) On December 14, 2015, the
2 Court denied Plaintiff’s motion for default judgment with leave to amend and indicated
3 that it was uncertain whether “Nancy Demich Analyst” was authorized to accept service
4 on behalf of Defendant. (ECF No. 10.) On December 18, 2015, Plaintiff filed his FAC.
5 (ECF No. 11.) On December 23, 2015, summons was returned executed. (ECF No. 12.)
6 A process server again executed service on a “Nancy Demich Analyst,” on the SDSU
7 campus on December 18, 2015. (*Id.*) On February 1, 2016, Plaintiff filed a motion for
8 leave to file a SAC. (ECF No. 13.)

9 STANDARD OF REVIEW

10 Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleading
11 once as a matter of course within (1) 21 days after serving the pleading or (2) 21 days after
12 the earlier of service of a responsive pleading or service of a Rule 12(b) motion. Fed. R.
13 Civ. Pro. 15(a). Otherwise, “a party may amend its pleading only with the opposing party's
14 written consent or the court's leave,” though the court “should freely give leave when
15 justice so requires.” *Id.* “Five factors are taken into account to assess the propriety of a
16 motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility
17 of amendment, and whether the [party] has previously amended [a pleading].” *Johnson v.*
18 *Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004) (citing *Nunes v. Ashcroft*, 348 F.3d 815, 818
19 (9th Cir. 2003)). In practice, however, courts more freely grant plaintiffs leave to amend
20 pleadings in order to add claims than new parties. *Union Pacific R.R. Co. v. Nevada Power*
21 *Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991). These factors do not “merit equal weight,” and
22 “it is the consideration of prejudice to the opposing party that carries the greatest weight.”
23 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). “Absent
24 prejudice, or a strong showing of any of the remaining [] factors, there exists a *presumption*
25 under Rule 15(a) in favor of granting leave to amend.” *Id.* (original emphasis).

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1 **DISCUSSION**

2 A party may amend its pleading once as a matter of course within (1) 21 days after
3 serving the pleading or (2) 21 days after the earlier of service of a responsive pleading or
4 service of a Rule 12(b) motion. Fed. R. Civ. P. 15(a). Otherwise, “a party may amend its
5 pleading only with the opposing party's written consent or the court's leave,” though the
6 court “should freely give leave when justice so requires.” *Id.* In this case, more than 21
7 days have passed since Plaintiff effected service of the FAC on “Nancy Demich Analyst,”
8 on the SDSU campus on December 18, 2015. (*See* ECF No. 11.) However, it appears that
9 neither the summons nor Plaintiff’s initial Complaint or FAC were ever served on a party
10 authorized to accept service of a summons or complaint on behalf of SDSU.

11 SDSU’s “Risk Management | Division of Business and Financial Affairs” website¹
12 states:

13 **Summons and Complaints**

14 The California State University (CSU), Office of General Counsel is the only
15 office authorized to accept service of a summons or complaint on behalf of
16 the CSU (which includes San Diego State University), the CSU Chancellor,
and the CSU campus presidents.

17 CSU’s website² lists CSU’s Office of General Counsel’s Contact Information as
18 follows:

19 Office of General Counsel
20 The California State University, Office of the Chancellor
21 401 Golden Shore, Fourth Floor
22 Long Beach, California 90802-4210
23 (562) 951-4500
(562) 951-4956 (fax)


24 In light of Plaintiff’s failure to sue and serve the proper party, the Court **DENIES**
25 **AS MOOT** Plaintiff’s motion for leave to a file a SAC. (ECF No. 13.) Instead, Plaintiff
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28 ¹ See <http://riskmgmt.sdsu.edu/subpoenas.htm>.
² See https://www.calstate.edu/gc/contact_info.shtml.

1 is permitted to amend his pleading as a matter of course under Rule 15 within **thirty (30)**
2 days of the date of this order. Plaintiff is directed to correct his pleading (including the
3 caption) to reflect the proper defendant, The California State University (CSU), and to
4 serve the summons and the complaint on a party authorized to accept service on behalf of
5 the proper defendant. The hearing scheduled for April 22, 2016 is hereby **VACATED**.

6 **IT IS SO ORDERED.**

7 Dated: February 8, 2016


8 Hon. Gonzalo P. Curiel
9 United States District Judge

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