

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 John Henry YABLONSKY,
4 Plaintiff,
5 v.
6 CALIFORNIA DEPARTMENT OF
7 CORRECTIONS & REHABILITATION,
8 et al.,
9 Defendants.

Case No.: 18-cv-1122-AGS

**ORDER STRIKING PLAINTIFF'S
THIRD AMENDED COMPLAINT
(ECF 118)**

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11 On March 22, 2021, plaintiff Yablonsky moved for leave to “extend the deadline for
12 amending [the pleadings].” (ECF 109, at 1.) The Court granted the request. (ECF 116, at 2.)
13 But instead of moving to amend, plaintiff filed a Third Amended Complaint. (ECF 118.)

14 Yablonsky’s filing was improper. In the April 19, 2021 order, the Court granted
15 plaintiff’s request to amend the *scheduling order* under Fed. R. Civ. P. 16(b). (ECF 116,
16 at 2.) But Yablonsky did not request—and the Court did not grant—leave to amend the
17 *pleadings* under Fed. R. Civ. P. 15(a). *See* Fed. R. Civ. P. 15(a)(2) (“[A] party may amend
18 its pleading only with the opposing party’s written consent or the court’s leave.”); *see also*
19 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) (“[A] party
20 seeking to amend pleading after [the] date specified in [the] scheduling order must first
21 show ‘good cause’ for amendment under Rule 16(b)[;] then, if ‘good cause’ be shown, the
22 party must demonstrate that amendment was proper under Rule 15.”). Here, the Court left
23 the Rule 15 prejudice analysis “for any future motion to amend” and specifically “[took]
24 no position at [the] time on whether any . . . reason justifies granting leave to amend here.”
25 (ECF 116, at 2; *id.* at 2 n.1); *see also Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531,
26 538 (9th Cir. 1989) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962) (setting forth factors
27 to consider in deciding whether to grant leave to amend)).
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1 Because the Court did not grant leave to amend the pleadings under Rule 15, the
2 Court strikes plaintiff's Third Amended Complaint. The deadline for plaintiff to file any
3 motion to amend is still **May 17, 2021**.

4 Dated: April 28, 2021

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7 Hon. Andrew G. Schopler
8 United States Magistrate Judge
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