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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MARCO PEREZ,

12 Plaintiff,

13 vs.

14 D. G. ADAMS, et al.,

15 Defendants.
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1:11-cv-01820-GSA-PC

ORDER FOR DEFENDANT TO FILE
RESPONSE TO PLAINTIFF'S MOTION TO
AMEND WITHIN THIRTY DAYS
(Doc. 24.)

17 Marco Perez ("Plaintiff") is a state prisoner proceeding pro se with this civil rights
18 action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action
19 on November 1, 2011. (Doc. 1.) This case now proceeds on the original Complaint against
20 defendants Schneider, Carter, Pimental, and Byrum for use of excessive force and deliberate
21 indifference to medical needs.¹ (Id.) This case is now in the discovery phase. (Doc. 20.)

22 On March 16, 2015, Plaintiff lodged a proposed First Amended Complaint, together
23 with a motion to amend the complaint. (Doc. 24.) Plaintiff requests leave to amend the
24 complaint to "name the right defendants and correct all errors in his complaint." (Id. at 1.)
25 Plaintiff states that "in his original complaint [plaintiff] wrongly named R. Schneider and T.
26 Carter, [and] plaintiff asks to drop these defendants and add the correct defendants." (Id.)
27

28 ¹ On June 18, 2014, the court issued an order dismissing all other claims and defendants from
this action, for failure to state a claim. (Doc. 9.)

1 Plaintiff asserts that on January 19, 2015, pursuant to Rule 15(a), he asked for Defendants'
2 consent prior to amending his complaint and “[t]hey appeared to agree under the above mention
3 (*sic*) reasons.” (Id.)

4 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the
5 party’s pleading once as a matter of course at any time before a responsive pleading is served.
6 Fed. R. Civ. P. 15(a). Otherwise, a party may amend only by leave of the court or by written
7 consent of the adverse party, and leave shall be freely given when justice so requires. Id. Here,
8 because Defendants have filed an Answer to the complaint, Plaintiff requires leave of court to
9 file an amended complaint unless Defendants have given “written consent.” Plaintiff merely
10 claims that Defendants “appeared” to consent to amendment of the complaint. This is not
11 sufficient to satisfy Rule 15(a)’s requirement of “written consent.” Thus, Defendant shall be
12 required to file a written response to Plaintiff’s motion to amend within thirty days.

13 Accordingly, IT IS HEREBY ORDERED that within thirty days of the date of service
14 of this order, Defendants shall file a written response to Plaintiff’s motion to amend, indicating
15 either (1) consent to the filing of the proposed amended complaint submitted by Plaintiff, or (2)
16 opposition to the motion to amend.

17
18 IT IS SO ORDERED.

19 Dated: March 19, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE