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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

9
10 COSME PRESAS,

CASE NO. 1:14-cv-01740---SKO

11 Plaintiff,

12 v.

**ORDER DENYING AS PREMATURE
PLAINTIFF'S MOTION TO AMEND THE
COMPLAINT AND ACCEPTING
PLAINTIFF'S FIRST AMENDED
COMPLAINT AS FILED**

13
14 WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, et al.,

(Doc. 8)

15 Defendants.
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19 On November 7, 2014, Plaintiff Cosme Presas ("Plaintiff"), a state prisoner proceeding pro
20 se and *in forma pauperis*, filed this action against Defendants Watchtower Bible and Tract Society
21 ("the Society"), Olivia Moreno, Wayne Frazee, and several Doe defendants (collectively
22 "Defendants"). (Doc. 1.)

23 On January 5, 2015, Plaintiff filed a motion to amend the complaint and concurrently filed
24 a First Amended Complaint. Fed. R. Civ. P. 15(a). As no defendant has yet been served, Plaintiff
25 is entitled to file a first amended complaint as a matter of right. Therefore, Plaintiff may file a first
26 amended complaint without leave of court and his motion shall be denied as premature. *Id.*

27 After this first amendment, however, Plaintiff may amend his pleading only with the
28 opposing parties' written consent or with the court's leave. *Id.* The factors commonly considered

1 to determine the propriety of a motion for leave to amend are: (1) bad faith, (2) undue delay, (3)
2 prejudice to the opposing party, and (4) futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182
3 (1962); *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006).

4 The Court hereby accepts Plaintiff's First Amended Complaint and deems it filed as
5 Plaintiff's First Amended Complaint concurrently with this Order.

6 **CONCLUSION AND ORDER**

7 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's motion to amend the complaint is DENIED as premature; and,
9 2. Plaintiff's concurrently filed First Amended Complaint is accepted and deemed the
10 operative complaint.

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13 IT IS SO ORDERED.

14 Dated: February 17, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE