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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.

13 **ORDER DENYING AS PREMATURE**  
14 **PLAINTIFF'S MOTION TO AMEND THE**  
15 **COMPLAINT AND ACCEPTING**  
16 **PLAINTIFF'S FIRST AMENDED**  
17 **COMPLAINT AS FILED**

18 (Doc. 8)

19 WATCHTOWER BIBLE AND TRACT  
20 SOCIETY OF NEW YORK, et al.,

21 Defendants.

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

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

After this first amendment, however, Plaintiff may amend his pleading only with the  
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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12 IT IS SO ORDERED.  
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14 Dated: February 17, 2015

15 /s/ Sheila K. Oberto  
16 UNITED STATES MAGISTRATE JUDGE  
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