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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 ANDRE UNDERWOOD,

7 Plaintiff,

8 v.

9 R. COX and C. STANLEY,

10 Defendants.
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Case No. 1:16-cv-00597-AWI-EPG (PC)

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

(ECF NO. 32)
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13 Andre Underwood ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
14 *pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. On September 5,
15 2017, Plaintiff filed a motion for leave to file a Second Amended Complaint (ECF No. 32), and
16 lodged his Second Amended Complaint (ECF No. 33). Plaintiff requests leave to amend
17 because his First Amended Complaint did not clearly state what capacity he is suing defendants
18 in. Accordingly, he wants to amend his complaint to clarify that he is suing both defendant
19 Cox and defendant Stanley ("Defendants") in their individual capacities.

20 Plaintiff's motion will be denied as unnecessary. "Where state officials are named in a
21 complaint which seeks damages under 42 U.S.C. § 1983, it is presumed that the officials are
22 being sued in their individual capacities." Shoshone-Bannock Tribes v. Fish & Game Comm'n,
23 Idaho, 42 F.3d 1278, 1284 (9th Cir. 1994) (citing Price v. Akaka, 928 F.2d 824, 828 (9th
24 Cir.1990)). "Any other construction would be illogical where the complaint is silent as to
25 capacity, since a claim for damages against state officials in their official capacities is plainly
26 barred." Id.

27 Plaintiff's First Amended Complaint seeks monetary damages (ECF No. 9, p. 23), and
28 does not explicitly state whether Defendants are being sued in their individual or official

1 capacities (Id. at pgs. 8-9). Therefore, it is presumed that Defendants are being sued in their
2 individual capacities. Thus, there is no need for Plaintiff to file an amended complaint to
3 clarify that he is suing Defendants in their individual capacities.¹

4 Accordingly, based on the foregoing, IT IS ORDERED that Plaintiff's motion for leave
5 to file a Second Amended Complaint is DENIED.²

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7 IT IS SO ORDERED.

8 Dated: September 14, 2017

9 /s/ Eric P. Groj
10 UNITED STATES MAGISTRATE JUDGE

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26 ¹ The Court notes that Plaintiff may also be asking to amend his complaint so that he can clarify that he is
27 alleging that Defendants acted under color of law. However, the First Amended Complaint already alleges that
28 Defendants acted under color of law. (ECF No. 9, p. 8). Accordingly, there is no need for Plaintiff to amend his
complaint to allege that Defendants acted under color of law.

² If Plaintiff wants to make any other changes to his First Amended Complaint he may file another
motion for leave to amend.