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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW MAROWITZ,
Plaintiff,
v.
SARAH WILLIAMS, et al.,
Defendants.

No. 1:16-cv-01892-DAD-BAM

ORDER GRANTING PLAINTIFF’S MOTION
TO AMEND COMPLAINT

(Doc. No. 8)

On August 2, 2018, plaintiff Andrew Marowitz, proceeding in this action *pro se* and having paid the required filing fee, filed a “status update and motion to amend the complaint.” (Doc. No. 8.) Therein, plaintiff explains that he previously mailed a letter to the court on July 6, 2018, seeking to amend his complaint to add as defendants the State of California and California Attorney General Xavier Becerra. (*Id.* at 1.) However, on August 1, 2018, plaintiff contacted the Clerk of the Court and was informed that his letter had not been received. (*Id.*) Plaintiff has therefore filed the present motion seeking leave to file a second amended complaint to amend his causes of action and the named defendants. (*Id.*) Plaintiff has separately filed a proposed second amended complaint. (Doc. No. 9.)

The procedural history of this case is somewhat unusual. Service on the defendants has not yet been effected. Plaintiff filed his original complaint on December 20, 2016. The docket reflects that plaintiff’s complaint was initially set to be screened by the assigned magistrate judge.

1 (See Doc. No. 4 at 2.) The magistrate judge granted plaintiff leave to file a first amended
2 complaint, which plaintiff did on December 14, 2017. (Doc. Nos. 4, 5.) However, screening of
3 plaintiff's first amended complaint was never conducted, apparently pursuant to a change in this
4 court's screening practices. The Clerk of the Court therefore issued summons on May 9, 2018.
5 (Doc. No. 6.) Plaintiff represents that he has not yet served the defendants with the summons and
6 first amended complaint because he now seeks to file a second amended complaint. (Doc. No. 8
7 at 1.)

8 A plaintiff may amend the complaint once as a matter of course within 21 days after
9 service. Fed. R. Civ. P. 15(a)(1)(A). If the complaint requires a responsive pleading, a plaintiff
10 may amend the complaint 21 days after service of a responsive pleading, or 21 days after service
11 of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1)(B). In all
12 other circumstances, a plaintiff must obtain the defendant's consent or leave of the court to amend
13 the complaint. Fed. R. Civ. P. 15(a)(2). Because the defendants have not yet been served in this
14 action and have therefore not served any responsive pleadings, the court will grant plaintiff's
15 motion to file a second amended complaint.¹

16 Accordingly:

- 17 1. Plaintiffs' motion for leave to file an amended complaint (Doc. No. 8) is granted;
- 18 2. The Clerk of the Court is directed to file the proposed second amended complaint
19 (Doc. No. 9) on the docket captioned as the second amended complaint, which is
20 deemed filed as of the date of this order;
- 21 3. The Clerk of the Court is further directed to issue an amended summons against
22 the defendants named in the second amended complaint.

23 IT IS SO ORDERED.

24 Dated: August 23, 2018

25 
26 _____
27 UNITED STATES DISTRICT JUDGE

28 ¹ The court will do so only because plaintiff is entitled to amend as a matter of right.