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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID ARTHUR DEPONTE,

Plaintiff,

v.

STOHL, STERN, J. SAUCEDO, K.
SUDANO, M. DOBE, GUNSAGA,

Defendants.

Case No. 1:24-cv-00695-HBK

ORDER GRANTING PLAINTIFF’S MOTION
TO AMEND

(Doc. No. 40)

Pending before the Court is Plaintiff’s pleading titled “Motion to File Second Amended Complaint. Notice to Stand on First Amended Complaint,” filed on July 31, 2024. (Doc. No. 40). Liberally construed, Plaintiff’s Motion disagrees with the Court’s July 17, 2024 Screening Order finding his First Amended Complaint failed to state a claim and asks the Court to permit him to file a Second Amended Complaint. (*See generally id.*). The Court thus construes Plaintiff’s filing as a Motion to Amend.¹ Plaintiff accompanied his Motion with a Second Amended Complaint. (Doc. No. 41).

¹ A motion’s “nomenclature is not controlling.” *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983) (quoting *Sea Ranch Ass’n v. Cal. Coastal Zone Conservation Comm’ns*, 537 F.2d 1058, 1061 (9th Cir. 1976)). Instead, we “construe [the motion], however styled, to be the type proper for the relief requested.” *Id.*


1 Under Rule 15, a party “may amend its filing once as a matter of course” Fed. R.
2 Civ. P. 15(a)(1). For subsequent amendments, “a party may amend its pleading only with the
3 opposing party’s written consent or the court’s leave. The court should “freely give[]” leave to
4 amend when there is no “undue delay, bad faith[,] dilatory motive on the part of the movant, . . .
5 undue prejudice to the opposing party by virtue of . . . the amendment, [or] futility of the
6 amendment” Fed. R. Civ. P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962).

7 In its screening order, the Court afforded Plaintiff an opportunity to file a second amended
8 complaint. (*See* Doc. No. 35 at 12-13). Thus, Plaintiff was not required to seek leave of the
9 Court via a motion. However, in an abundance of caution, the Court will grant Plaintiff’s Motion,
10 deem the Second Amended Complaint the operative complaint, and screen the Second Amended
11 Complaint in due course.

12 Accordingly, it is **ORDERED**:

- 13 1. Plaintiff’s Motion to Amend (Doc. No. 40) is GRANTED.
- 14 2. The Court deems the Second Amended Complaint (Doc. No. 41) the operative
15 complaint in this case and will screen it in due course.

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17 Dated: August 27, 2024

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19 HELENA M. BARCH-KUCHTA
20 UNITED STATES MAGISTRATE JUDGE
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