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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS HENDON,

Plaintiff,

No. CIV S-10-2864 EFB P

vs.

RIGG, et al.,

Defendants.

ORDER GRANTING LEAVE TO AMEND

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This action currently proceeds on the first amended complaint filed January 24, 2011. Dckt. No. 6. Service of the amended complaint on defendants has not yet been effected. On May 20, 2011, plaintiff filed a motion for leave to file an amended complaint along with the second amended complaint. Dckt. Nos. 12, 13. For the reasons explained, the court will grant the motion.

Under Federal Rule Civil Procedure 15, “A party may amend its pleading once as a matter of course before being served with a responsive pleading.” Fed. R. Civ. P. 15(a)(1)(A). Plaintiff has already amended his complaint once. Dckt. No. 6. Thus, he must obtain either defendants’ written consent or the court’s leave to amend again. Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” *Id.* As defendants have not yet

1 appeared in this action, the court will allow plaintiff to amend the complaint and accepts the  
2 second amended complaint as the operative pleading in this case.

3 Accordingly, it hereby is ORDERED that:

4 1. Plaintiff's May 20, 2011 motion to file an amended complaint is granted. The court  
5 will screen the second amended complaint pursuant to 28 U.S.C. § 1915A in due course.

6 2. The order of June 8, 2011 requiring plaintiff to return service forms in accordance  
7 with the court's prior screening order is hereby vacated. If, upon screening the second amended  
8 complaint, the court finds that plaintiff has stated a cognizable claim against any defendant, the  
9 court will issue a new order governing service.

10 Dated: November 22, 2011.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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