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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DUMP TRUCK OWNERS
ASSOCIATION,

No. 2:11-cv-00384-MCE-GGH

Plaintiff,

v.

MEMORANDUM AND ORDER

AIR RESOURCES BOARD,

Defendant.

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Plaintiff California Dump Truck Owners Association ("Plaintiff") filed this action against California's Air Resources Board ("ARB") on February 11, 2011. Plaintiff now seeks leave to amend its Complaint to remove the ARB as Defendant and to substitute as Defendants instead two individuals in their official capacities, the ARB's Chairperson, Mary D. Nichols, and its Executive Officer, James Goldstene.¹

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¹ Because oral argument will not be of material assistance, the Court ordered this matter submitted on the briefing. E.D. Cal. Local Rule 230(g).

1 Federal Rule of Civil Procedure 15(a)(1) provides:

2 A party may amend its pleading once as a matter of
3 course within: (A) 21 days after serving it, or (B) if
4 the pleading is one to which a responsive pleading is
5 required, 21 days after service of a responsive
6 pleading or 21 days after service of a motion under
7 Rule 12(b), (e), or (f), whichever is earlier.

8 Subsection (A) applies to pleadings to which no responsive
9 pleading is allowed. Fed. R. Civ. Pro. 15 advisory committee's
10 notes to 2009 amendments ("[A]mended Rule 15(a)(1) extends from
11 20 to 21 days the period to amend a pleading to which no
12 responsive pleading is allowed."). Subsection (B) thus applies
13 here, and, since no responsive pleading or Rule 12 motion has
14 been filed, Plaintiff may amend its Complaint as of right.
15 Burriola v. Nevada, 2010 WL 4810594 *1 (Nov. 19, 2010) ("No
16 responsive pleading has been filed, therefore, plaintiff may
17 amend his complaint as of right."); see also William W.
18 Schwarzer, et al., Federal Civil Procedure Before Trial, ¶ 8:1403
19 (The Rutter Group 2010) ("[U]nless the right has been terminated
20 earlier for other reasons (i.e., earlier filing of a Rule 12(b)
21 motion), plaintiff may amend the complaint once as a matter 'of
22 course' up to 21 days after service of an answer.").

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1 Plaintiff's Motion for Leave to File First Amended Complaint
2 (ECF No. 8) is therefore GRANTED. Plaintiff's First Amended
3 Complaint, submitted as Exhibit "1" to the current Motion, shall
4 be deemed filed on the date this Order is electronically filed.

5 IT IS SO ORDERED.

6 Dated: April 6, 2011



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9 MORRISON C. ENGLAND, JR.
10 UNITED STATES DISTRICT JUDGE
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