

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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STEVE BLAKE, individually and
as Successor-in-Interest to
Carl Blake, deceased, NO. CIV. 2:12-2061 WBS CKD
ORDER

Plaintiff,

V.

CITY OF SACRAMENTO; SACRAMENTO
POLICE DEPARTMENT; RICK
BRAZIEL, in his official
capacity as chief of police
for the City of Sacramento and
the Sacramento Police
Department; and DOE OFFICERS 2
through 5, and DOES 6-50,
inclusive.

Defendants.

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24 Plaintiff Steve Blake initiated this action under 42
25 U.S.C. § 1983 on August 6, 2012. On September 17, 2012,
26 defendants City of Sacramento and Rick Braziel filed a motion to
27 dismiss for failure to state a claim upon which relief can be
28 granted pursuant to Federal Rule of Civil Procedure 12(b) (6) and

1 a motion to strike pursuant to Rule 12(f). Pursuant to Rule
2 15(a)(1)(B), plaintiff had twenty-one days from the date
3 defendants' motion was served to amend his pleading "once as
4 matter of course." Fed. R. Civ. P. 15(a)(1)(B). With the
5 exception of filing an amended pleading once as a matter of
6 course, "a party may amend its pleading only with the opposing
7 party's written consent or the court's leave." Fed. R. Civ. P.
8 15(a)(2).

9 Plaintiff did not file an amended complaint within
10 twenty-one days after service of defendants' motion,¹ but filed a
11 First Amended Complaint, (Docket No. 12), and a separate "'Doe'
12 amendment," (Docket No. 13), on October 17, 2012. Plaintiff's
13 First Amended Complaint was untimely under Rule 15(a)(1)(B) and
14 will therefore be stricken.

15 Plaintiff's purported "'Doe' amendment" will also be
16 stricken. "The practice of 'Doe' pleading is not permitted by the
17 Federal Rules of Civil Procedure [nor] by the United States Court
18 of Appeals for the Ninth Circuit." Ortiz v. Bank of Am., Civ.
19 No. 81-298 LKK, 1982 WL 502, at *7 (E.D. Cal. Sept. 9, 1982)
20 (internal quotation marks omitted) (alteration in original). "As
21 a general rule, the use of 'John Doe' to identify a defendant is
22 not favored." Gillespie v. Civiletti, 629 F.2d 637, 642 (9th

23 ¹ Eastern District Local Rule 135(a) provides that
24 "service" occurs when the "Notice of Electronic Filing" is
25 automatically generated when a document is filed if counsel has
26 consented to electronic service under Local Rule 135(g). Here,
27 plaintiff's counsel consented to electronic service and the
28 docket reflects that notice of defendants' motion to dismiss and
strike was electronically mailed to plaintiff's counsel on
September 17, 2012. Plaintiff therefore had twenty-one days from
September 17, 2012, to file an amended complaint as a matter of
course.

1 Cir. 1980).

2 Here, plaintiff's attempt to substitute Bonnie Ilene
3 Wehe for "Doe 1" illustrates the reasons why Doe pleading is not
4 allowed in the federal courts. In plaintiff's "'Doe' amendment,"
5 plaintiff simply states that he is substituting Wehe for "Doe 1."
6 The amendment is void of any allegations putting Wehe on notice
7 of how she allegedly violated plaintiff's rights and Wehe is not
8 even listed as a defendant in the caption of the untimely First
9 Amended Complaint. Plaintiff's "'Doe' amendment" will therefore
10 be stricken.

11 If plaintiff wishes to amend his Complaint or join Wehe
12 or any other individuals as defendants in this action, he may do
13 so by seeking leave of court. Because the court is issuing a
14 Status (Pretrial Scheduling) Order simultaneously with this
15 Order, any motion for leave to amend would be governed by Rule
16 16. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607-
17 08 (9th Cir. 1992) ("Once the district court had filed a pretrial
18 scheduling order pursuant to Federal Rule of Civil Procedure 16
19 which established a timetable for amending pleadings that rule's
20 standards controlled.").

21 IT IS THEREFORE ORDERED that Docket Nos. 12 and 13 be,
22 and the same hereby are, stricken.

23 DATED: November 6, 2012

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25 WILLIAM B. SHUBB

26 UNITED STATES DISTRICT JUDGE

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