

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PERFECTO BAUER GARCIA,
Plaintiff,
v.
STEVE POTTER,
Defendant.

Case No. 15-cv-04045-EDL

**ORDER REGARDING DKT. NO.
14**

On September 4, 2015, pro se plaintiff Perfecto Garcia filed a complaint against the City of Napa, the Police Chief, and various individual officers. This Court granted Plaintiff's application to proceed in forma pauperis and sua sponte dismissed the complaint with leave to amend. In the order dismissing the complaint, the Court required Plaintiff to clearly state the basis for federal court jurisdiction and make clear which factual allegations and claims relate to which defendants, and stated that the amended complaint should not contain factual allegations previously addressed in the Court's order dismissing the earlier related case with prejudice.

On October 14, 2015, Plaintiff timely filed an amended complaint that minimally complied with the Court's order. On October 20, 2015, the Court ordered that the amended complaint be served on Defendant. On November 4, 2015, Plaintiff filed a document entitled "First Amendment." See Dkt. No. 14. Pursuant to Federal Rule of Civil Procedure 15 (a), a party may amend its pleading once as a matter of course under certain circumstances, and in all other cases a party may amend its pleading only with the opposing party's consent or leave of court, which should be given when justice so requires. Plaintiff has previously amended his complaint, so he may not amend again "as a matter of course." See 15(a)(1). Further, Plaintiff has not obtained Defendant's consent to the amendment or requested leave of Court to file an amended complaint

1 as required by Rule 15(a)(2). If Plaintiff wishes to file an amended complaint, he must seek leave
2 of this Court to do so, and provide an explanation as to why leave should be granted.

3 Additionally, Plaintiff's "First Amendment" does not comply with Local Civil Rule 10-1,
4 which requires that "[a]ny party filing or moving to file an amended pleading must reproduce the
5 entire proposed pleading and may not incorporate any part of a prior pleading by reference.
6 Plaintiff shall comply with this rule if he seeks leave to file an amended complaint.

7 Finally, Plaintiff's "First Amendment" attaches a subpoena to Defendant. Pursuant to
8 Federal Rule of Civil Procedure 26(d), "[a] party may not seek discovery from any source before
9 the parties have conferred as Required by Rule 26(f) . . ." There is no indication that the parties
10 have conducted a Rule 26(f) conference, especially given that Defendant was only served on
11 October 29, 2015, and this discovery is therefore premature and should not be served.

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13 **IT IS SO ORDERED.**

14 Dated: November 6, 2015

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17 ELIZABETH D. LAPORTE
18 United States Magistrate Judge
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 6, 2015, I SERVED a true and correct copy(ies) of the attached order, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Perfecto Bauer Garcia
2006 Swan Way
Fairfield, CA 94533

Dated: November 6, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
Stephen Ybarra, Deputy Clerk to the
Honorable ELIZABETH D. LAPORTE