

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STEPHEN ULLRICH,

Plaintiff,

v.

No. 17cv141 JCH/WPL

ADDA MOLDT and
DAVID RIVER,

Defendants.

ORDER GRANTING MOTION TO AMEND AND ORDERING SERVICE

THIS MATTER comes before the Court on Plaintiff's Motion to File Amended Complaint, Doc. 6, filed April 20, 2017.

Plaintiff's claims arise from the alleged improper actions of Defendants in the disposal of Plaintiff's parents' property before and after his parents' deaths. Although Plaintiff mentioned "Interstate Diversity" in his statement regarding jurisdiction, he did not alleged sufficient facts to show that the Court has diversity jurisdiction over this matter. Plaintiff is a prisoner in Idaho. The Complaint did not allege any facts regarding his citizenship or the citizenship of Defendants. *See Smith v. Cummings*, 445 F.3d 1254, 1260 (10th Cir. 2006) ("a prisoner is presumed to be a citizen of the state of which he was a citizen before his incarceration, even if he is subsequently incarcerated in another state"). Nor did he allege any facts that show the amount in controversy exceeds \$75,000.00. The Court dismissed the Complaint without prejudice for lack of jurisdiction and granted Plaintiff leave to file an amended complaint. *See* Doc. 4, filed April 3, 2017.

The Court will grant Plaintiff's Motion to File Amended Complaint because the Court has previously granted Plaintiff leave to file an amended complaint. The Amended Complaint

alleges that "Plaintiff was a resident of the State of California" prior to his incarceration and that Defendants are residents of the State of New Mexico. The Amended Complaint also alleges that the amount in controversy exceeds \$700,000.00.

Section 1915 provides that the "officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]". 28 U.S.C. § 1915(d). Rule 4 provides that:

At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Fed. R. Civ. P. 4(c)(3). Plaintiff states that Defendants' legal representative is Lynn Finegan, Attorney at Law, P.O. Box 924, Los Alamos, New Mexico 87544.

IT IS ORDERED that Plaintiff's Motion to File Amended Complaint, Doc. 6, filed April 20, 2017, is **GRANTED**.

IT IS ALSO ORDERED that the Clerk file Plaintiff's proposed amended complaint, which is pages 2-8 of Doc. 6, as Plaintiff's Amended Complaint in this case.

IT IS FURTHER ORDERED that the Clerk mail a notice and waiver of service forms, with copies of the Amended Complaint and this Order, to Defendants Adda Moldt and David River at the following address:

Adda Moldt and David River
c/o Lynn Finegan, Attorney at Law
P.O. Box 924
Los Alamos, New Mexico 87544


UNITED STATES MAGISTRATE JUDGE