

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL DUNSMORE,
Plaintiff,
v.
STATE OF CALIFORNIA *et al.*,
Defendants.

Case No.: 20-CV-406-AJB(WVG)

**ORDER (1) GRANTING
PLAINTIFF'S MOTION TO AMEND
AND (2) DENYING DEFENDANTS'
MOTION TO DISMISS**

[Doc. Nos. 64 & 74.]

Pending before the Court is Defendants' motion to dismiss (Doc. No. 64) as well as Plaintiff's *ex parte* motion for leave to file an amended complaint (Doc. No. 74), which Plaintiff filed with the assistance of counsel he retained after Defendants filed their motion to dismiss. Plaintiffs' motion to file an amended complaint is GRANTED, and, as a result, Defendants' motion to dismiss is DENIED without prejudice.

Subject to exceptions that do not apply here, Federal Rule of Civil Procedure 15 provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave . . . [and] [t]he court should freely give leave when justice so requires. Fed. R. Civ. P. 15(a)(2).

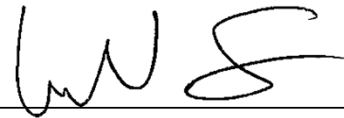
Here, the recent development of counsel representing Plaintiff warrants granting leave to amend. As compared to a pro se prisoner, counsel will (hopefully) significantly

1 streamline and clarify the claims and issues in this case. Given that the pending motion to
2 dismiss attacks a pleading drafted by Plaintiff when he was *pro se*, considerations of justice
3 and efficiency strongly require granting Plaintiff's motion.

4 Accordingly, Plaintiff is granted leave to file a Second Amended Complaint and
5 shall do so no later than **February 14, 2022**. Defendants shall file a response to the Second
6 Amended Complaint no later than **April 9, 2022**.

7 IT IS SO ORDERED.

8 DATED: December 17, 2021

A handwritten signature in black ink, appearing to read 'WV Gallo', written over a horizontal line.

Hon. William V. Gallo
United States Magistrate Judge