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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERNEST MILLER,

Plaintiff,

v.

CDC WARDEN AND STAFF, et al.,

Defendants.

CASE NO. 1:07-cv-01416-LJO-DLB PC

ORDER DENYING MOTION AS MOOT

(Doc. 67)

_____ /

Plaintiff Ernest Miller (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. This action was closed on September 8, 2009, when the Court dismissed this action for failure to state a claim upon which relief may be granted. On September 11, 2009, Plaintiff filed a motion for an answer to docket 55, which was the Court’s February 13, 2009 order directing the United States Marshal to serve the first amended complaint, filed June 9, 2008, on defendant Ortiz. Defendant Ortiz was never served, and on September 11, 2009, the United States Marshal returned the summons unexecuted. Plaintiff filed a second amended complaint on May 11, 2009, which became the operative pleading. Because the first amended complaint was no longer the operative pleading, the Court’s February 13, 2009 order is moot. Accordingly, Plaintiff’s motion, filed September 11, 2009, is DENIED as moot.

IT IS SO ORDERED.

Dated: April 19, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE