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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KEVIN GUNN,

Plaintiff,

v.

JAMES TILTON, et al.,

Defendants.

CASE NO. 1:08-cv-01038-LJO-GBC (PC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS  
Doc. 66

ORDER DENYING MOTION FOR EXTENSION OF TIME TO FILE AMENDED COMPLAINT  
Doc. 50

ORDER GRANTING MOTION TO STRIKE AMENDED COMPLAINT  
Doc. 54

ORDER STRIKING AMENDED COMPLAINT FILED ON NOVEMBER 29, 2010  
Doc. 52

ORDER DIRECTING DEFENDANTS TO FILE AN AMENDED MOTION FOR SUMMARY JUDGMENT OR FILE INTENT NOT TO AMEND  
(THIRTY-DAY DEADLINE)

Plaintiff Kevin Gunn (“Plaintiff”) is a state prisoner proceeding in forma pauperis (“IFP”) in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On July 20, 2011, the Magistrate Judge filed a Findings and Recommendations herein which was served on the Plaintiff and which contained notice to the Plaintiff that any objections to the Findings and Recommendations were to be filed within thirty days. Doc. 66. After being granted extensions of time, Plaintiff filed an objection to the Findings and Recommendations on December 21, 2011.

1 In his objection, Plaintiff asserts that since the original order was ambiguous and that he has  
2 met the heightened pleading standard, his second amended complaint should not be stricken from  
3 the record. Doc. 77. Given the fact that: 1) discovery had closed and Defendants had filed a motion  
4 for summary judgment before Plaintiff ever filed a motion to amend; 2) the order permitting the  
5 initial amendment was limited to clarification and not contemplate attaching additional exhibits; and  
6 3) Plaintiff's amendment would unfairly prejudice Defendants, the Court finds that striking the  
7 second amended complaint is warranted.

8  
9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
10 de novo review of this case. Having carefully reviewed the entire file and Plaintiff's objections, the  
11 Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The Findings and Recommendations, filed July 20, 2011, is adopted in full;
- 14 2. Defendants' motion to strike is granted to the extent that it is consistent with  
15 the findings and recommendations (Doc. 54);
- 16 3. Plaintiff's additional Second Amended Complaint, filed on October 25, 2010  
17 is hereby stricken from the record (Doc. 52);
- 18 4. Plaintiff's motion for extension of time to file the second amended complaint  
19 is denied as moot (Doc. 50); and
- 20 5. Defendants are given thirty (30) days to amend/supplement their motion for  
21 summary judgment or to file a notice of intent not to supplement.

22  
23 IT IS SO ORDERED.

24 **Dated: December 22, 2011**

**/s/ Lawrence J. O'Neill**  
UNITED STATES DISTRICT JUDGE