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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 REQUIRING PLAINTIFF TO FILE  
OPPOSITION TO DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT

Doc. 41; Doc. 42

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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. On March 6, 2009, Plaintiff filed his First Amended Complaint. Doc. 14. On December 24, 2009, Plaintiff filed a motion for leave to file an amended complaint (Doc. 28) pursuant to FED. R. CIV. P. 15(a), and lodged his Second Amended Complaint (Doc. 29). On May 19, 2010, Defendants filed a motion for summary judgment. Doc. 41; Doc. 42. On September 21, 2010, Judge Roll granted in part Plaintiff's motion to amend. Doc. 49. In the order filed on September 21, 2010, the Judge Roll stated that Defendants may amend or supplement their motion for summary judgment within thirty days of the filing date of Plaintiff's amended complaint or file a notice of their intent not to amend or supplement. Doc. 49.

After being granted an extension, Plaintiff filed an additional amended complaint on November 29, 2010. Doc. 52. On December 7, 2010, Defendants filed a motion to strike the amended complaint filed on November 29, 2010, as it did not conform to the order filed on September 21, 2010. Doc. 54. Subsequently, however, the case was transferred to this Court (Doc. 60) and on July 20, 2011, the Court issued findings and recommendations wherein the Court

1 construed the lodged second amended complaint filed on December 24, 2009, as the operative  
2 amended complaint and recommended that Plaintiff's third amended complaint filed on October 25,  
3 2010, be stricken. Doc. 66. In its findings and recommendations, the Court also recommended that  
4 Defendants be given thirty days to amend or supplement their motion for summary judgment or to  
5 file a notice of intent not to supplement. Doc. 66. After three extensions of time, On December 21,  
6 2011, Plaintiff filed objections to the Court's findings and recommendations. Doc. 77. On  
7 December 22, 2011, the findings and recommendations were adopted in full. Doc. 78.

8 On January 10, 2012, Plaintiff filed notice of appeal. Doc. 81. Because Plaintiff is  
9 attempting to appeal an order which is not a final appealable order of the court, Plaintiff's filing of  
10 the notice of appeal does not deprive the court of jurisdiction. On January 17, 2012, the Court filed  
11 an order requiring Defendants to give notice of their intent to resubmit a motion for summary  
12 judgement or give notice of their intent to proceed on the current motion for summary judgment.  
13 Doc. 86. On February 1, 2012, Defendants filed notice of their intent to proceed on the current  
14 motion for summary judgment filed on May 19, 2010. Doc. 41; Doc. 42.

15 Based on the foregoing, the Court HEREBY ORDERS: that within thirty (30) days of service  
16 of this order, Plaintiff shall file an opposition to Defendants' motion for summary judgement filed  
17 on May 19, 2010. Doc. 41; 42.

18  
19 IT IS SO ORDERED.

20 Dated: February 2, 2012

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UNITED STATES MAGISTRATE JUDGE