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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

SERGIO ALEJANDRO GAMEZ,
CDCR #C-47759,

Plaintiff,

vs.

F. GONZALEZ, S. WRIGHT, N.
GRANNIS, K. BERKLER, K.S. ALLEN,
M. CARRASCO, J. GENTRY,
K. SAMPSON,

Defendants.

Civil No. 08-1113 MJL (PCL)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
ALLEN AND WRIGHT'S MOTION
TO JOIN**

[ECF No. 102]


On July 15, 2011, Counsel for Defendants filed a "Notice and Application." In this notice, Counsel for Defendants "notice Plaintiff Gamez" that Defendants K.J. Allen and S. Wright are "new" Defendants that have been joined to the action "pursuant to Court's ruling on July 11, 2011." (See Defs.' Not. at 1.) Counsel for Defendants mischaracterizes Magistrate Judge Lewis' Order. These Defendants were not joined on this date. Instead, the Court made

1 clear to Defense Counsel that they had filed an Answer on behalf of these Defendants on
2 December 4, 2009 [ECF No. 20]. Thus, these Defendants have been parties to this action since
3 their initial appearance on that date. Any claim regarding improper service was waived when
4 Defense Counsel filed an Answer on their behalf on December 4, 2009. *See* FED.R.CIV.P. 12(h).
5 Defendants' Motion to Join the action pursuant to Rule 19 is **DENIED** as moot. *See*
6 FED.R.CIV.P. 19.

7 However, to the extent that Defense Counsel seeks to add these parties to the Defendants'
8 previously filed motion for summary judgment, the Motion is **GRANTED**. Because Defendants
9 Allen and Wright have not added any additional argument to the previously filed Motion for
10 Summary Judgment, no additional Opposition is required to be filed by Plaintiff.

11 The Clerk of Court is directed to correct the docket to reflect the proper spelling of
12 Defendant Allen's name as "K.J. Allen."

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14 DATED: July 25, 2011

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16 M. James Lorenz
17 United States District Court Judge
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