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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 LOUIS BRANCH,

10 Plaintiff,

11 vs.

12 N. GRANNIS, et al.,

13 Defendants.
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1:08-cv-01655-AWI-GSA-PC

ORDER GRANTING PLAINTIFF'S
MOTION
(Doc. 90.)

ORDER STRIKING DEFENDANT'S
ANSWER AND MOTION TO DISMISS
(Docs. 87, 88.)

ORDER ADVISING PARTIES NOT TO
PURSUE DISCOVERY ON BEHALF OF
DEFENDANTS ALVAREZ AND SZALAI
AT THIS STAGE OF THE PROCEEDINGS

18 **I. BACKGROUND**

19 Louis Branch ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
20 with this civil action. Plaintiff filed the Complaint commencing this action on July 7, 2008.
21 (Doc. 1.) This case now proceeds on the Second Amended Complaint filed by Plaintiff on
22 August 25, 2010, against defendant Umphenour and Does 1 and 2, for failure to protect
23 Plaintiff in violation of the Eighth Amendment, and against defendant Umphenour for
24 retaliation in violation of the First Amendment, in their individual capacities, for money
25 damages only.¹ (Doc. 26.)
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27 ¹ On May 11, 2011, the Court dismissed all other claims and defendants from this action, based on
28 Plaintiff's failure to state a claim. (Doc. 29.) The Doe defendants have not been sufficiently identified by Plaintiff
to enable service of process by the U. S. Marshal.

1 On October 30, 2012, the court issued a Scheduling Order commencing discovery and
2 establishing deadlines in this action, including a deadline to amend pleadings of April 30, 2013,
3 and a discovery cut-off date of June 30, 2013. (Doc. 73.) On April 15, 2013, the court issued
4 an order extending the deadline to amend pleadings to May 31, 2013. (Doc. 84.) On April 22,
5 2013, Plaintiff filed a motion to amend the complaint and lodged a proposed third amended
6 complaint. (Docs. 86, 87.) Plaintiff's motion to amend is currently pending.

7 On May 6, 2013, defendant Umphenour ("Defendant") filed an Answer to the third
8 amended complaint and a motion to dismiss the third amended complaint in part. (Docs. 87,
9 88.) On June 5, 2013, Plaintiff filed a motion to stay Defendant's Answer, motion to dismiss,
10 and discovery requests for defendants Alvarez and Szalai. (Doc. 90.)

11 Plaintiff's motion is now before the court.

12 **II. PLAINTIFF'S MOTION**

13 Plaintiff argues that Defendant's Answer and motion to dismiss were prematurely filed
14 because the court has not ruled on Plaintiff's motion to file the third amended complaint.
15 Plaintiff also argues that Defendant's discovery requests on behalf of defendants Alvarez and
16 Szalai are premature and inappropriate. Plaintiff asserts that on May 10, 2013, Defendant
17 served interrogatories, a request for admissions, and a request for production of documents
18 upon Plaintiff on behalf of unserved defendants Alvarez and Szalai.

19 Plaintiff correctly argues that Defendant's Answer, motion to dismiss, and discovery
20 requests are premature and inappropriate. Because the court has not ruled on Plaintiff's motion
21 to amend, and the proposed third amended complaint has not been filed, this case currently
22 proceeds on the Second Amended Complaint filed on August 25, 2010, against defendant
23 Umphenour and Does 1 and 2. Defendant's discovery requests on behalf of defendants Alvarez
24 and Szalai are likewise inappropriate, because those defendants have not been added to
25 Plaintiff's complaint, served with process, or appeared in this action.

26 **III. CONCLUSION**

27 Based on the foregoing, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff's motion, filed on June 5, 2013, is GRANTED;

1 2. Defendant's Answer to the third amended complaint, filed on May 6, 2013, is
2 STRICKEN from the record;

3 3. Defendant's motion to dismiss, filed on May 6, 2013, is STRICKEN from the
4 record; and

5 4. The parties shall not pursue discovery on behalf of defendants Alvarez and
6 Szalai at this stage of the proceedings, and Plaintiff may disregard any pending discovery
7 requests which have been served upon him by Defendant on behalf of defendants Alvarez and
8 Szalai.

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11 IT IS SO ORDERED.

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13 Dated: June 7, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE