

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES RASPBERRY,

Plaintiff,

vs.

1: 08 CV 01767 OWW YNP GSA (PC)

ORDER RE MOTION (DOC 22)

A. TREVINO, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. On March 18, 2009, an order was entered, finding the complaint stated a claim for relief against Defendants Trevino and Miguel.

Defendants Trevino and Miguel were served with the complaint and responded by motion to dismiss. On October 22, 2009, findings and recommendations were entered, recommending that the motion to dismiss be granted and that Plaintiff be given the opportunity to either notify the court of his willingness to proceed only on his Fourteenth Amendment equal protection claims or file an amended complaint that cures the deficiencies identified in the recommendation. The District Court has not ruled on the recommendation.

On November 13, 2009, Plaintiff filed a first amended complaint. On November 23, 2009, Defendants filed a motion to strike the first amended complaint. Defendants correctly note

1 that until the District Court rules on the October 22, 2009, findings and recommendation, any
2 pleading submitted by Plaintiff is premature. The court has not yet issued a final order allowing
3 Plaintiff leave to file an amended complaint.

4 Accordingly, IT IS HEREBY ORDERED that Defendants' motion to strike the first
5 amended complaint is granted. The first amended complaint filed on November 23, 2009, is
6 stricken.

7
8 IT IS SO ORDERED.

9 Dated: February 11, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE