

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

On December 12, 2008, Plaintiff V. Steven Booth, proceeding *in pro per*, filed a Complaint for Damages for Constitutional Violations against Defendants Scott Carvell and Al Rogers, both alleged to be employees of Kern County. The Complaint alleged claims arising out of Defendants' execution of a search warrant on April 15, 2008.

On February 9, 2009, Defendants filed a motion to dismiss the Complaint for failure to state a claim upon which relief can be granted, noticing the motion for hearing on April 27, 2009.

26 On April 13, 2009, Plaintiff filed a First Amended Complaint

1 for Damages for Constitutional Violations against Defendants
2 Carvell and Rogers.

3 Defendants' motion to dismiss is DENIED as moot and oral
4 argument set for April 27, 2009 is VACATED. Rule 15(a)(1)(A),
5 Federal Rules of Civil Procedure, provides that a party may amend
6 its pleading once as a matter of right before being served with a
7 responsive pleading. A motion to dismiss for failure to state a
8 claim is not a responsive pleading under Rule 15(a)(1)(A).

9 *Schreiber Distrib. v. Serv-Well Furniture Co.*, 806 F.2d 1393,
10 1401 (9th Cir. 1986).

11 IT IS SO ORDERED.

12 Dated: April 20, 2009

13 /s/ Oliver W. Wanger
14 UNITED STATES DISTRICT JUDGE

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