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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF CALIFORNIA
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9 V. STEVEN BOOTH,) No. CV-F-08-1912 OWW/GSA
10)
11) MEMORANDUM DECISION AND
12 Plaintiff,) ORDER DENYING DEFENDANTS'
13 vs.) MOTION TO DISMISS AS MOOT
14) (Doc. 8) AND VACATING ORAL
15 SCOTT CARVELL, et al.,) ARGUMENT SET FOR APRIL 27,
16) 2009
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17 On December 12, 2008, Plaintiff V. Steven Booth, proceeding
18 *in pro per*, filed a Complaint for Damages for Constitutional
19 Violations against Defendants Scott Carvell and Al Rogers, both
20 alleged to be employees of Kern County. The Complaint alleged
21 claims arising out of Defendants' execution of a search warrant
22 on April 15, 2008.

23 On February 9, 2009, Defendants filed a motion to dismiss
24 the Complaint for failure to state a claim upon which relief can
25 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

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE