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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TED KEENER ERNST,	)	1:08-cv-01940 OWW GSA
	)	
Plaintiff,	)	
	)	FINDINGS AND RECOMMENDATIONS
v.	)	REGARDING MOTIONS TO DISMISS
	)	(Docs. 5, 11 & 13)
MATTHEW CATE, et al.,	)	
	)	
Defendants.	)	

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On January 30, 2009, Defendant Matthew Cate moved to dismiss Plaintiff’s complaint, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. The motion was amended on February 20, 2009, and again, on February 23, 2009. Rather than oppose the motions, Plaintiff filed a First Amended Complaint on April 7, 2009, pursuant to Federal Rules of Civil Procedure, rule 15(a).<sup>1</sup> An amended complaint supercedes the original complaint, and this Court treats Plaintiff’s original complaint as withdrawn. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

Accordingly, this Court HEREBY RECOMMENDS that Defendant’s motions to dismiss Plaintiff’s original complaint be DENIED as moot.

These findings and recommendations will be submitted to the Honorable Oliver W. Wanger pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within ten (10) days after being served with these findings and recommendations, the parties may file written objections

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<sup>1</sup>Defendant filed a Reply on April 10, 2009, acknowledging the motion was moot in light of the filing of the amended complaint.

1 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings  
2 and Recommendations." The parties are advised that failure to file objections within the  
3 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d  
4 1153 (9th Cir. 1991).

5  
6  
7 IT IS SO ORDERED.

8 **Dated: April 14, 2009**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE