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

KENNY CALIHAN,

Plaintiff,

vs.

1: 09 cv 01373 MJS PC

ORDER RE MOTION

(Doc. 24)

D. ADAMS, 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. Pending before the court is Plaintiff’s motion titled “motion to seek when the defendants will be served with the complaint.”

On January 8, 2010, an order was entered granting Plaintiff’s motion to amend the complaint and giving Plaintiff thirty days in which to file an amended complaint. No amended complaint has yet been filed.

Instead, on January 20, 2010, Plaintiff filed the instant motion seeking to have defendants served with the original complaint.<sup>1</sup> Plaintiff has not, however, clearly indicated an intent to withdraw his motion to file an amended complaint. The court will grant Plaintiff thirty days in

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<sup>1</sup> This action was initiated by civil complaint received by the court on August 6, 2009.

1 which to file an amended complaint in compliance with the January 8, 2010 order. If Plaintiff  
2 does not do so, his failure to file an amended complaint will be construed as a withdrawal of the  
3 motion for leave to file an amended complaint. This action will then proceed on the original  
4 complaint. The court will screen the original complaint and direct service of process upon any  
5 defendant against whom a claim is stated.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's January 20, 2010, motion seeking service on defendants, is conditionally  
8 granted as provided above.

9 2. Plaintiff is granted thirty days from the date of service of this order in which to file an  
10 amended complaint in compliance with the order of January 8, 2010.

11  
12  
13 IT IS SO ORDERED.

14 **Dated: May 4, 2010**

**/s/ Michael J. Seng**  
**UNITED STATES MAGISTRATE JUDGE**