

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  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

KEVIN FIELDS,

Plaintiff,

vs.

R. ROSENTHAL,

Defendant.

1:10-cv-01764-GSA-PC

ORDER DENYING DEFENDANT'S MOTION  
TO DISMISS AND PLAINTIFF'S MOTION  
FOR EXTENSION OF TIME AS MOOT  
(Docs. 12, 13.)

\_\_\_\_\_/

Kevin Fields ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by civil complaint at the Kings County Superior Court on August 11, 2010 (Case #10-C0309). On September 23, 2010, defendant Rosenthal ("Defendant") removed the case to federal court by filing a Notice of Removal of Action pursuant to 28 U.S.C. § 1441(b). (Doc. 1.) On October 7, 2010, Plaintiff filed the First Amended Complaint. (Doc. 5.) The Court screened the First Amended Complaint pursuant to 28 U.S.C. § 1915A and entered an order on May 21, 2012, giving Plaintiff two options, (1) to file a Second Amended Complaint, or (2) to notify the Court of his willingness to proceed on the claims found cognizable by the Court. (Doc. 9.) On May 29, 2012, Plaintiff filed written notice that he was willing to proceed on the claims found cognizable by the Court. (Doc. 11.) On June 20, 2012, Defendant filed a motion to dismiss the complaint for failure to state a claim. (Doc. 12.)

1 On July 5, 2012, Plaintiff filed a motion for reconsideration of the Court's screening order.  
2 (Doc. 13.) On July 26, 2012, the Court entered an order denying Plaintiff's motion for  
3 reconsideration and requiring him to either file a Second Amended Complaint or notify the court of  
4 his willingness to proceed with the First Amended Complaint on the claims found cognizable by the  
5 Court. (Doc. 16.) On August 22, 2012, Plaintiff filed a Second Amended Complaint. (Doc. 17.)

6 In light of the fact that Plaintiff has filed a Second Amended Complaint, Defendant's pending  
7 motion to dismiss the First Amended Complaint, filed on June 20, 2012, is moot. Any further  
8 motion to dismiss must be a new motion complete in itself without reference to the prior motion.  
9 Further, Plaintiff's motion for extension of time to respond to Defendant's motion to dismiss, filed  
10 on July 12, 2012, is also moot.

11 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 12 1. Defendant's motion to dismiss, filed on June 20, 2012, is DENIED as moot; and
- 13 2. Plaintiff's motion for extension of time, filed on July 12, 2012, is DENIED as moot.

14 IT IS SO ORDERED.

15 **Dated: August 24, 2012**

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