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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TYE MATTHEWS,

Plaintiff,

v.

H. HOLGUIN, et al.,

Defendants.

CASE NO. 1:10-cv-01806-SMS PC

ORDER DENYING PLAINTIFF’S MOTION FOR  
LEAVE TO AMEND AS UNNECESSARY

(ECF No. 8)

Plaintiff Tye Matthews (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The complaint in this action was filed on September 10, 2010, and is currently pending screening. On March 14, 2011, Plaintiff filed a consent to jurisdiction of the Magistrate Judge. On June 27, 2011, Plaintiff filed a motion to amend the complaint because he assumed that a Magistrate Judge was a trial judge and he wants a jury trial. It appears that Plaintiff has mistakenly assumed that by consenting to the jurisdiction of the Magistrate Judge he will not be entitled to a trial by jury. As explained in the order re consent, a Magistrate Judge may conduct all proceedings, including a trial by jury. By consenting to the jurisdiction of the Magistrate Judge Plaintiff has not forfeited his right to a trial by jury.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). In this case, a responsive pleading has not been served and Plaintiff has not previously amended his complaint. Therefore,

1 Plaintiff may file an amended complaint without leave of the Court.

2 To the extent that Plaintiff is attempting to withdraw his consent to Magistrate Judge  
3 jurisdiction, once a civil case is referred to a Magistrate Judge under 28 U.S.C. § 636(c), the  
4 reference can be withdrawn only “for good cause shown on its own motion, or under extraordinary  
5 circumstances shown by any party.” Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993). Plaintiff has  
6 not set forth good cause or extraordinary circumstances to grant such relief.

7 Accordingly, Plaintiff’s motion to amend the complaint is HEREBY DENIED.

8 IT IS SO ORDERED.

9 **Dated:** June 28, 2011

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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