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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY NGUYEN,

CASE NO. 1:11-cv-00809-AWI-SKO PC

Plaintiff,

ORDER DENYING MOTION AS
UNNECESSARY AND GRANTING
PLAINTIFF THIRTY DAYS WITHIN WHICH
TO FILE AN AMENDED COMPLAINT

v.

M. D. BITER,

(Doc. 38)

Defendant.

Plaintiff Anthony Nguyen, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 18, 2011. On October 11, 2011, the Court screened Plaintiff’s complaint and ordered him to either file a notice of willingness to proceed only on the claim found to be cognizable or file an amended complaint. Plaintiff filed a notice of willingness to proceed only on his cognizable claim against Defendant Biter on October 27, 2011, and in response, the Honorable Anthony W. Ishii dismissed Defendants Adams, Tarnoff, Pool, and Foston from this action on October 31, 2011. Now pending before the Court is Plaintiff’s motion seeking leave to amend, filed on December 8, 2011.

Plaintiff has not previously amended and therefore, he may amend once as a matter of right without leave of court. Fed. R. Civ. P. 15(a)(1). However, given that the next phase of litigation is service of the complaint by the United States Marshal, and this action cannot sit idle indefinitely, the Court will grant Plaintiff thirty days within which to file an amended complaint. If Plaintiff fails to do so by the deadline, the Court will issue an order directing the United States Marshal to initiate service of the original complaint on Defendant Biter.

1 Accordingly, Plaintiff's motion to amend is HEREBY DENIED as unnecessary, but Plaintiff
2 is GRANTED **thirty (30) days** within which to file an amended complaint. If an amended
3 complaint is not filed by the deadline, the United States Marshal will be directed to initiate service
4 of the original complaint.

5
6 IT IS SO ORDERED.

7 **Dated: December 12, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE