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

FRED GOMEZ,  
  
  Plaintiff,  
  
  v.  
  
SWAIM, et al.,  
  
  Defendants.

Case No. 1:11-cv-01436-AWI-DLB (PC)  
  
**ORDER DENYING PLAINTIFF’S MOTION TO  
COMPEL AS PREMATURE**  
  
(ECF No. 24)

Plaintiff Fred Gomez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On March 28, 2013, Plaintiff filed a motion to compel Defendant to respond to his interrogatories and his various requests for production of documents. (ECF No. 24.)

Plaintiff served his first set of discovery requests on Defendant Swaim in September and October 2012. (ECF No. 24. at 9, 18.) At the time, discovery was proceeding in keeping with the Court’s Discovery and Scheduling Order, issued in connection with Plaintiff’s original complaint. (ECF No. 15.) Before Defendant’s responses were due, however, the Court granted Plaintiff’s request to file an amended complaint, and the Court set about screening that new complaint. (ECF No. 22 at 2.)

This case is now proceeding on Plaintiff’s amended complaint. Plaintiff’s original complaint, and the discovery requests served in connection with it, have been superceded by the

1 amended complaint. *See Forsyth v. Humana*, 114 F.3d 1474 (9th Cir. 1997) (an “amended  
2 complaint supercedes the original, the latter being treated thereafter as non-existent”). Discovery  
3 in this case will proceed after the new Defendants have been served; after they have answered the  
4 amended complaint; and after the Court has issued a new Discovery and Scheduling Order.

5 Accordingly, Plaintiff’s motion to compel, filed March 28, 2013, is HEREBY DENIED as  
6 premature.

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8 IT IS SO ORDERED.

9 Dated: March 31, 2014

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

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