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

MALIK JONES,

Plaintiff,

No. CIV S-08-0096 KJM EFB P

vs.

T. FELKER, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Currently before the court is plaintiff’s November 22, 2010 motion to compel. Dckt. No. 110. Plaintiff has also filed, without leave of court, an amended complaint. Dckt. No. 116.

I. Motion to Compel

In this two-paragraph motion, plaintiff states that he sent discovery requests to defendants¹ on September 23, 2010 and received no response. Defendants oppose the motion, and defense counsel declares that defendants received no discovery requests from plaintiff after

¹ Following the court’s ruling on defendants’ motions to dismiss, issued after the briefing on the instant motion to compel, the only defendant now remaining in the case is defendant Lebeck.

1 the start of discovery on September 13, 2010. Dckt. No. 111-1 at ¶ 2. Plaintiff had previously
2 served discovery requests on defendants in June 2009, which defendants responded to. Dckt.
3 No. 111-1, Exs. A, B.

4 As plaintiff has included no evidence or argument in support of his motion to compel, it
5 must be denied. The court cannot find that defendants failed to properly respond to discovery
6 requests that plaintiff has not shown were actually served on defendants and that defendant aver
7 were never received.

8 **II. Amended Complaint**

9 Without explanation or motion for leave to amend, plaintiff has filed an amended
10 complaint on March 2, 2011. Dckt. No. 116. On February 1, 2011, it was recommended that the
11 motions to dismiss filed by defendants Betti, Brauntingham, Callison, Hunter, Cunningham, and
12 Felker be granted and that plaintiff's claims against those defendants be dismissed. Dckt. No.
13 114. That recommendation was adopted on March 29, 2011. Dckt. No. 120. Plaintiff's
14 amended complaint, however, continues to attempt to make claims against those defendants.

15 Under Federal Rule of Civil Procedure 15, because more than 21 days have elapsed since
16 the service of a pleading responsive to plaintiff's currently operative complaint (filed March 29,
17 2010, Docket No. 82), plaintiff must seek leave of court or the written consent of defendants to
18 file an amended complaint. Fed. R. Civ. P. 15(a)(2). Plaintiff has done neither. Accordingly,
19 the amended complaint filed March 2, 2011 must be stricken.

20 **III. Order**

21 Accordingly, it is hereby ORDERED that:

- 22 1. Plaintiff's November 22, 2010 motion to compel is denied.
- 23 2. The amended complaint filed March 2, 2011 and appearing at Docket No. 116 be
24 stricken.

25 Dated: April 20, 2011.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE