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

JOHN MICHAEL KIRK,

No. 2:08-cv-02249-SRT

Plaintiff,

ORDER

vs.

T. FELKER, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, prisoner at High Desert State Prison proceeding in forma pauperis, filed his complaint pursuant to 42 U.S.C. § 1983 alleging an Eighth Amendment violation by defendants Warden Felker, Chief of Inmate Appeals Grannis, Doctor David, and Doctor James. Defendant David was dismissed for lack of jurisdiction. On May 18, 2010, the Court dismissed plaintiff's claims against Felker and Grannis and granted plaintiff leave to amend to cure the pleading deficiencies as to Felker and Grannis. Although Plaintiff had not been granted a general leave to amend, on December 10, 2010, Plaintiff filed an amended complaint naming new parties and alleging new causes of action. On June 17, 2011, this Court issued an order striking the amended complaint because it did not cure the pleading deficiencies of the original complaint and, instead, named new parties and alleged new causes of action.

1 On January 18, 2011, the remaining Defendant filed a motion for summary judgment.  
2 The Plaintiff did not file an opposition to the motion. In its June 17, 2011 order, the Court noted  
3 this fact, and granted Plaintiff twenty-one (21) days to file an opposition. The Plaintiff did not do  
4 so, but instead filed a motion to dismiss the complaint without prejudice. Defendants did not  
5 object to dismissal, so long as it was with prejudice. In the alternative, Defendants requested a  
6 ruling on their motion for summary judgment.

7 Given the Plaintiff's decision not to contest the motion for summary judgment and  
8 Plaintiff's subsequent motion to dismiss his claims voluntarily, the Court hereby DISMISSES the  
9 action with prejudice. All other pending motions are denied as moot. Each party shall bear its  
10 own costs.

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12 DATED: July 27, 2011

13 /s/ Sidney R. Thomas

14 Sidney R. Thomas, United States Circuit Judge

15 Sitting By Designation  
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