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

KEVIN GALIK,

Plaintiff,

No. 2: 09-cv-0152 WBS KJN P

vs.

A. NANGALAMA, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is defendants’ February 13, 2012 motion for leave to file a second dispositive motion. On March 22, 2012, plaintiff filed an opposition. For the following reasons, defendants’ motion is granted.

On June 1, 2011, defendants filed a motion to dismiss and, in the alternative, motion for summary judgment. On October 14, 2011, the undersigned recommended that all claims against defendant Nangalama and the Equal Protection claim against defendant Duc be dismissed for failing to state a claim upon which relief may be granted. The undersigned further recommended that defendants’ motion to dismiss against defendant Duc for failure to exhaust administrative remedies be denied. The undersigned further recommended that defendants’ motion for summary judgment against defendant Duc be granted as to the due process claim and

1 denied as to the Eighth Amendment claim.

2 On November 1, 2011, defendants filed objections to the findings and  
3 recommendations. Defendants attached new evidence to their objections.

4 On February 7, 2012, the Honorable William B. Shubb adopted the October 14,  
5 2011 findings and recommendations. In this order, Judge Shubb declined to consider the new  
6 evidence submitted by defendants in their objections. Judge Shubb stated that defendants were  
7 not prohibited from requesting leave to file a second dispositive motion from the undersigned.

8 In the pending motion, defendants request leave to file a second summary  
9 judgment motion addressing the remaining Eighth Amendment claim against defendant Duc.  
10 Defendants state that they will present new evidence demonstrating that defendant Duc is entitled  
11 to summary judgment. Plaintiff opposes granting this request.

12 The undersigned is reluctant to grant defendants' request for the reasons discussed  
13 by Judge Shubb in his February 7, 2012 order. (See Dkt. No. 61 at 4-5.) However, the  
14 undersigned is also mindful of requiring a trial on issues that could have been resolved as a  
15 matter of law. Having weighed all factors, the undersigned finds that it is in the court's best  
16 interest, in this particular case, to grant defendants' motion for leave to file a second dispositive  
17 motion.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. Defendants' February 13, 2012 motion for leave to file a second dispositive  
20 motion (Dkt. No. 62) is granted;

21 2. Within thirty days of the date of this order, defendants shall file a second  
22 dispositive motion addressing the Eighth Amendment claim against defendant Duc; plaintiff may

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1 file an opposition within twenty-one days thereafter; defendants may file a reply to plaintiff's  
2 opposition within seven days thereafter.

3 DATED: March 27, 2012

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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