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

VANCE BLAINE,

No. CIV S-10-0103-CMK-P

Plaintiff,

vs.

ORDER

DUCAN, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for leave to amend (Doc. 12), along with a proposed amended complaint (Doc. 13).

The Federal Rules of Civil Procedure provide that a party may amend his or her pleading once as a matter of course within 21 days of serving the pleading or, if the pleading is one to which a responsive pleading is required, within 21 days after service of the responsive pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service of a motion under Rule 12(b), (e), or (f) of the rules, whichever time is earlier, see Fed. R. Civ. P. 15(a)(1)(B). In all other situations, a party’s pleadings may only be amended upon leave of court or stipulation of all the parties. See Fed. R. Civ. P. 15(a)(2). Here, plaintiff seeks to file an amended complaint,

1 which a pleading to which a responsive pleading is required. Therefore, leave to amend is  
2 governed by Rule 15(a)(1)(B). Because no responsive pleading or Rule 12(b), (e), or (f) motion  
3 has been filed, leave of court is not required to amend the complaint. Therefore, plaintiff's  
4 motion is denied as unnecessary. This action shall proceed on the amended complaint which was  
5 properly filed as of right on April 9, 2010. The court will address the amended complaint by  
6 separate order.

7 IT IS SO ORDERED.

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9 DATED: May 12, 2010

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11 **CRAIG M. KELLISON**  
12 UNITED STATES MAGISTRATE JUDGE  
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