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

DAVID WESLEY BIRRELL,  
aka BELLA-CHRISTINA BIRRELL,

No. CIV S-10-1707-GEB-CMK-P

Plaintiff,

vs.

ORDER

KEITH HARLAN KNAUF, 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 (Doc. 14) for leave to file an amended complaint. Plaintiff has also submitted a proposed amended complaint (Doc. 15). 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

1 Fed. R. Civ. P. 15(a)(2). Because no responsive pleading or Rule 12(b) motion has been filed,  
2 plaintiff may amend once as of right without leave of court. Plaintiff's amended complaint is  
3 deemed filed as of right and the motion for leave to amend is denied as unnecessary.

4 IT IS SO ORDERED.

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6 DATED: January 13, 2011

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8 **CRAIG M. KELLISON**  
9 UNITED STATES MAGISTRATE JUDGE