

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

KENNETH EVANS,

Plaintiff,

No. CIV S-10-1969 GEB GGH P

vs.

CSP SACRAMENTO, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. He seeks relief pursuant to 42 U.S.C. § 1983. On June 6, 2011, defendant filed a motion to dismiss, to which plaintiff opposed. On October 5, 2011, the undersigned issued findings and recommendations that the motion to dismiss be granted and this action be dismissed for failure to exhaust administrative remedies and the state law claim be dismissed for failing to comply with the California Tort Claims Act. Plaintiff did not file objections but on November 7, 2011, filed a motion to amend. Plaintiff seeks to amend his complaint in order to comply with the California Tort Claims Act, though it would appear any filing with the State of California would be late.

Regardless, plaintiff has no right to amend his complaint as of right at this time as he has served it more than 21 days after the filing of the motion to dismiss. Fed. R. Civ. P. 15(a)(1)(B). In any event, if plaintiff is able to properly comply with the California Tort Claims

1 Act he may refile this case.

2 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to amend (Doc.  
3 41) is denied.

4 DATED: November 15, 2011

5 /s/ Gregory G. Hollows  
6 UNITED STATES MAGISTRATE JUDGE

7 GGH:AB  
8 evan1969.ord2

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26