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

WILLIAM BARKER,

Plaintiff,

No. CIV S-11-0246 LKK GGH P

vs.

R. YASSINE,

Defendant.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, proceeds with a civil rights action.

On July 27, 2011, defendant filed a motion to dismiss. Plaintiff had filed motions for reconsideration and a motion to stay, but no formal opposition. On September 28, 2011, plaintiff filed a motion for a 45 day extension noting that another inmate who is aiding plaintiff, requires the extension. Defendant did not oppose the extension, so on October 3, 2011, the court granted plaintiff a 45 day extension to file an opposition to the motion to dismiss and stated no further extensions would be allowed.

On October 13, 2011, plaintiff filed a motion to amend and a first amended complaint. The substance of the first amended complaint is only two pages and repeats the same claim as the operative original complaint though much more succinctly. The underlying facts of this case are that the sole defendant used excessive force against plaintiff. Plaintiff stated that in

1 the original complaint and repeats the allegations in the amended complaint.

2 Plaintiff has no right to amend his complaint as of right at this time as he has
3 served it more than 21 days after the filing of the motion to dismiss. Fed. R. Civ. P. 15(a)(1)(B).
4 Moreover, there is no need to amend the complaint to state the exact same claim. Therefore,
5 plaintiff's motion is denied, and plaintiff must still file an opposition to the motion to dismiss as
6 discussed in the October 3, 2011, order. Failure to file an opposition will result in a
7 recommendation that this action be dismissed.

8 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to amend (Doc.
9 42) is denied and plaintiff must still file an opposition to the motion to dismiss as discussed in
10 the October 3, 2011, order.

11 DATED: October 18, 2011

12 /s/ Gregory G. Hollows
13 UNITED STATES MAGISTRATE JUDGE

14 GGH: AB
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