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

MARK A. GRANT,

Plaintiff,

No. 2:11-cv-00360 LKK KJN PS

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

ORDER

Two motions are presently set to be heard by the undersigned on November 10, 2011: (1) plaintiff’s motion to strike portions of defendants’ answer to the First Amended Complaint (Dkt. No. 62); and (2) plaintiff’s motion for leave to further amend his First Amended Complaint (Dkt. No. 63).¹ The undersigned denies plaintiff’s motion to strike as moot, but will hear plaintiff’s motion for leave to amend on November 10, 2011, if the parties are unable to stipulate to such further amendment in advance of the hearing.

On September 8, 2011, defendants filed their answer to plaintiff’s First Amended Complaint. (Dkt. No. 57.) However, on September 29, 2011, defendants filed a timely Amended Answer to the First Amended Complaint as a matter of course (Dkt. No. 59). See Fed.

¹ This case proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 R. Civ. P. 15(a)(1)(A) (providing that a party may amend its pleading once as a matter of course
2 within 21 days after serving it). On September 29, 2011, plaintiff filed his motion to strike
3 portions of defendants' original answer. However, because defendants' Amended Answer is now
4 defendants' operative answer, plaintiff's motion to strike the previously filed answer is denied as
5 moot.


6 Plaintiff's motion for leave to file a further amended complaint notes that plaintiff
7 did not seek defendants' consent to any further amendment prior to filing the motion. However,
8 plaintiff essentially seeks such consent within the motion. If defendants consent to permit
9 plaintiff to further amend the First Amended Complaint, plaintiff's motion for leave to amend
10 will be mooted. If defendants do not consent—and nothing in this order or the Federal Rules of
11 Civil Procedure compels defendants to consent to such amendment—the undersigned will
12 resolve plaintiff's motion for leave to amend after a hearing to be conducted on November 10,
13 2011. Nothing in this order should be construed as altering the briefing schedule provided in
14 Local Rule 230.

15 In light of the foregoing, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's motion to strike (Dkt. No. 62) is denied as moot.
- 17 2. Plaintiff's motion for leave to file a Second Amended Complaint shall
18 remain on the undersigned's calendar on November 10, 2011.

19 IT IS SO ORDERED.

20 DATED: October 7, 2011

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23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE
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