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

DARON MICHAEL OLIVER,
Plaintiff,
v.
DUANE SHELTON, et al.,
Defendants.

No. 2:18-CV-1809-KJM-DMC

ORDER

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is defendant’s motion to dismiss (Doc. 22). On January 3, 2019, the court vacated the hearing on defendants’ motion, originally set for January 9, 2019, because plaintiff failed to file an opposition to the motion. See Local Rule 230(c). The motion is now submitted for a decision on the record without oral argument and will be addressed separately.

On January 8, 2019, plaintiff filed a motion requesting a continuance of the January 9, 2019, hearing to July 4, 2019, which is a federal holiday. The request will be denied because, as indicated above, the court vacated the hearing on January 3, 2019, based on plaintiff’s non-opposition. On January 8, 2019, plaintiff also filed a first amended complaint without the written consent of defendants or leave of court. Because plaintiff’s first amended complaint is being submitted more than 21 days after defendants served their motion to dismiss, plaintiff may not amend as of right but may only do so upon the written consent of defendants or leave of court.

1 See Fed. R. Civ. P. 15(a). Plaintiff's first amended complaint will be stricken. This matter
2 proceeds on the original complaint which is the subject of defendants' submitted motion to
3 dismiss.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion for a continuance (Doc. 27) is denied; and
- 6 2. The first amended complaint filed on January 8, 2019 (Doc. 28) is stricken.

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9 Dated: January 11, 2019



10 DENNIS M. COTA
11 UNITED STATES MAGISTRATE JUDGE

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