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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICK A. MARTINEZ,

1:08-cv-01777-AWI-SMS-PC

Plaintiff,

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION BE
DISMISSED, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED
(Doc. 14.)

v.

JIM TILTON, et al.,

Defendants.

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

_____ /

Plaintiff Patrick A. Martinez ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on November 20, 2008. (Doc. 1.)

On August 12, 2009, the undersigned dismissed Plaintiff's complaint for failure to state a claim upon which relief may be granted and gave Plaintiff leave to file an amended complaint. (Doc. 9.) U.S.C. § 1915A; 28 U.S.C. § 1915(e). On November 6, 2009, Plaintiff filed the First Amended Complaint. (Doc. 14.) On November 13, 2009, the undersigned dismissed Plaintiff's First Amended Complaint for failure to state a claim upon which relief may be granted and gave Plaintiff leave to file a Second Amended Complaint within thirty days. (Doc. 15.) On November 19, 2009, the Court extended Plaintiff's time, granting Plaintiff thirty days from the date of service of the order in which to file the Second Amended Complaint. (Doc. 17.) U.S.C. § 1915A; 28 U.S.C. § 1915(e). To date,

1 Plaintiff has not complied with the Court's order. As a result, there is no pleading on file which sets
2 forth any claims upon which relief may be granted under section 1983.

3 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the undersigned
4 HEREBY RECOMMENDS that:

- 5 1. This action be dismissed, with prejudice, based on Plaintiff's failure to state any
6 claims upon which relief may be granted under section 1983; and
- 7 2. The Clerk be DIRECTED to close this case.

8 These Findings and Recommendations will be submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
10 **days** after being served with these Findings and Recommendations, Plaintiff may file written
11 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
12 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
14 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.

16 **Dated:** January 25, 2010

17 /s/ Sandra M. Snyder
18 UNITED STATES MAGISTRATE JUDGE
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