UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LOUIS RICHARD FRESQUEZ,

Plaintiff,

v.

LIEUTENANT PIETER MOERDYK,

Defendant.

/

1:04-cv-05123-AWI-GSA-PC

ORDER DISMISSING THIS ACTION, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED
(Doc. 1.)

ORDER THAT THIS DISMISSAL IS SUBJECT TO 28 U.S.C. § 1915(g)

ORDER FOR CLERK TO CLOSE CASE

Louis Richard Fresquez ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on March 11, 2003, in the United States District Court for the Northern District of California. On March 18, 2003, Plaintiff filed an amended complaint, and the case was subsequently transferred to this Court. (Doc. 1.)

On July 28, 2011, the Court dismissed Plaintiff's amended complaint for failure to state a claim upon which relief may be granted, with leave to file a second amended complaint within thirty days. (Doc. 84.) Plaintiff filed a motion for reconsideration of the Court's July 28, 2011 order, which was denied on November 10, 2011. (Docs. 85, 87.) Plaintiff was forewarned in the Court's order of November 10, 2011, that his failure to file a second amended complaint in compliance with the Court's order would "result in the dismissal of this action, with prejudice, for failure to state a

claim, without further notice." (Doc. 87 at 2 ¶III.) On December 8, 2011, Plaintiff was granted another thirty-day extension of time to file the second amended complaint. (Doc. 89.) The thirty-day time period has passed, and Plaintiff has not filed a second amended complaint. As a result, there is no pleading on file which sets forth any claims upon which relief may be granted under section 1983.

Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

1. This action is DISMISSED, with prejudice, based on Plaintiff's failure to state any claims upon which relief may be granted under section 1983;
2. This dismissal is subject to the "three-strikes" provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658 F.3d 1090 (9th Cir. 2011); and
3. The Clerk is DIRECTED to close this case.

IT IS SO ORDERED.

Dated: January 24, 2012

CHIEF UNITED STATES DISTRICT JUDGE