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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 TONY BLACKMAN,

1:06-cv-00081-GSA-PC

12 Plaintiff,

ORDER DISMISSING ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED

13 v.

14 M. S. EVANS, et al.,

15 Defendants.

16 ORDER FOR CLERK TO CLOSE CASE

17

18 Plaintiff Tony Blackman (“plaintiff”) is a state prisoner proceeding pro se and in forma
19 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on January
20 26, 2006. (Doc. 1.) On February 16, 2006, plaintiff consented to Magistrate jurisdiction pursuant
21 to 28 U.S.C. § 636(c)(1). (Doc. 4.) On February 2, 2009, the court reassigned this action to
22 Magistrate Gary S. Austin to conduct any and all proceedings in this case. (Doc. 16.)

23 On January 23, 2007, the court dismissed plaintiff’s complaint for failure to state a claim
24 upon which relief may be granted, with leave to amend. (Doc. 10.) On February 20, 2007, plaintiff
25 filed an amended complaint. (Doc. 11.) On October 16, 2008, the court dismissed plaintiff’s
26 amended complaint for failure to state a claim upon which relief may be granted, with leave to file
27 a second amended complaint. (Doc. 14.) On December 8, 2008, the court issued an order for
28 plaintiff to file an amended complaint within thirty days. (Doc. 15.) The thirty day deadline has

1 expired, and plaintiff has not filed a second amended complaint or otherwise responded to the court's
2 order. As a result, there is no pleading on file which sets forth any claims upon which relief may be
3 granted under section 1983.

4 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), IT IS HEREBY
5 ORDERED that:

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

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10 IT IS SO ORDERED.

11 Dated: February 3, 2009

/s/ Gary S. Austin
12 UNITED STATES MAGISTRATE JUDGE

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