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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

REX CHAPPELL,

Plaintiff,

v.

J. NEUBARTH, et al.,

Defendants.

CASE NO. 1:06-cv-01378-OWW-SKO PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF ACTION  
FOR FAILURE TO STATE A CLAIM

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Rex Chappell (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to [42 U.S.C. § 1983](#). On March 18, 2010, the Court screened Plaintiff’s first amended complaint pursuant to [28 U.S.C. § 1915A](#) and found that Plaintiff’s first amended complaint failed to state a claim upon which relief can be granted under [Section 1983](#). (Doc. #19.) Plaintiff was informed of the deficiencies in his claims and was directed to file a second amended complaint within 30 days of the date of service of the March 18, 2010 screening order. Plaintiff has not filed a second amended complaint.

Because Plaintiff has not filed a second amended complaint, the Court will recommend dismissal of this action with prejudice for failure to state a claim upon which relief can be granted. See [Ferdik v. Bonzelet, 963 F.2d 1258, 1261 \(9th Cir. 1992\)](#)(dismissal with prejudice upheld where court had instructed plaintiff regarding deficiencies in prior order dismissing claim with leave to amend).

Accordingly, it is HEREBY RECOMMENDED that this action be dismissed for failure to state a claim upon which relief can be granted.

1           These Findings and Recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of [Title 28 U.S.C. § 636\(b\)\(1\)](#). Within thirty (30)  
3 days after being served with these Findings and Recommendations, any party may file written  
4 objections with the Court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
6 shall be served and filed within ten (10) days after service of the objections. The parties are advised  
7 that failure to file objections within the specified time may waive the right to appeal the District  
8 Court’s order. [Martinez v. Ylst, 951 F.2d 1153 \(9th Cir. 1991\)](#).

9  
10 IT IS SO ORDERED.

11 **Dated:**     May 22, 2010    

                                  /s/ Sheila K. Oberto                                    
                                  UNITED STATES MAGISTRATE JUDGE