

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES SMITH,

1:06-cv-01479-GSA-PC

Plaintiff,

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

v.

FRAUENHEIN, et al.,

(Doc. 1.)

Defendants.

ORDER FOR CLERK TO CLOSE CASE

Plaintiff James Smith ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 23, 2006. (Doc. 1.) On November 13, 2006, Plaintiff consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1), and on February 17, 2008, the court reassigned this action to the undersigned. (Docs. 3, 23.)

On November 18, 2008, the undersigned dismissed Plaintiff's complaint for failure to state a claim upon which relief may be granted and ordered Plaintiff to file an amended complaint within thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). (Doc. 18.) On December 23, 2008, the court granted plaintiff a thirty day extension of time to respond to the Court's order. (Doc. 21.) To date, Plaintiff has not complied with or otherwise responded to the Court's order. As a result, there is no pleading on file which sets forth any claims upon which relief may be granted under section 1983.

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Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), 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; and
2. The Clerk is DIRECTED to close this case.

IT IS SO ORDERED.

Dated: February 18, 2009

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE