

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

10 JAMES SMITH, 1:06-cv-01479-GSA-PC
11 Plaintiff, ORDER DISMISSING ACTION, WITH
12 v. PREJUDICE, FOR FAILURE TO STATE A
13 FRAUENHEIN, et al., CLAIM UPON WHICH RELIEF MAY BE
14 Defendants. (Doc. 1.) ORDER FOR CLERK TO CLOSE CASE

17 Plaintiff James Smith (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
18 in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 23,
19 2006. (Doc. 1.) On November 13, 2006, Plaintiff consented to Magistrate Judge jurisdiction
20 pursuant to 28 U.S.C. § 636(c)(1), and on February 17, 2008, the court reassigned this action to the
21 undersigned. (Docs. 3, 23.)

22 On November 18, 2008, the undersigned dismissed Plaintiff's complaint for failure to state
23 a claim upon which relief may be granted and ordered Plaintiff to file an amended complaint within
24 thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). (Doc. 18.) On December 23, 2008, the court
25 granted plaintiff a thirty day extension of time to respond to the Court's order. (Doc. 21.) To date,
26 Plaintiff has not complied with or otherwise responded to the Court's order. As a result, there is no
27 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