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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

THOMAS D. BRALEY,

Plaintiff,

v.

WASCO STATE PRISON, et al.,

Defendants.

CASE NO. 1:07-cv-01423-OWW-SKO PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF ACTION

(Doc. 27)

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Thomas D. Braley (“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 June 21, 2010, Plaintiff filed a motion for judgment on the pleadings. (Doc. #27.)

Plaintiff’s complaint was dismissed for failing to state any claims on August 6, 2009. (Doc. #20.) Plaintiff was given thirty days leave to file an amended complaint. Plaintiff has not filed an amended complaint. Accordingly, there are no pleadings on the docket on which judgment can be granted. The Court will recommend that Plaintiff’s motion for judgment on the pleadings be denied.

Further, since Plaintiff’s complaint was dismissed with leave to amend for failing to state any claims and Plaintiff has not filed an amended complaint, the Court will recommend that this action be dismissed and closed. 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: February 8, 2011**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE