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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEVIN ROBERSON,

Plaintiff,

v.

S. ZAMORA, et al.,

Defendants.

CASE NO. 1:08-cv-214-AWI-MJS (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DISMISSING
ACTION WITH PREJUDICE FOR FAILURE
TO STATE A CLAIM

(ECF Nos. 24 & 25)

ORDER DIRECTING THE CLERK OF COURT
TO CLOSE THE CASE

Plaintiff Kevin Roberson, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 8, 2011, the Magistrate Judge filed a Findings and Recommendation herein which was served on Plaintiff and contained notice to Plaintiff that any objection to the Findings and Recommendation was to be filed by March 20, 2011. No date, Plaintiff has not filed any objections.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c) and Local Rule 305, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the Findings and Recommendations to be supported by the record and by proper analysis. On January 13, 2011, the Magistrate Judge found that the third amended complaint did not state a claim. The Magistrate Judge gave Plaintiff notice of the complaint's pleading deficiencies, and granted Plaintiff an opportunity to amend. See Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (if court determines that complaint fails to state claim, leave to amend may be granted to extent that

1 complaint's deficiencies can be cured); Noll v. Carlson, 809 F. 2d 1446, 1448 (9th Cir. 1987)
2 (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing for
3 failure to state a claim). Because Plaintiff never filed an amended complaint, this action is subject
4 to dismissal for Plaintiff's failure to state a claim, as set forth in the court's January 13, 2011 order,
5 and subject to dismissal for Plaintiff's failure to comply with the court's January 13, 2011 order.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The Findings and Recommendation, filed March 8, 2011, is adopted in full;
- 8 2. The instant action is DISMISSED with prejudice for failure to state a claim and
9 failure to comply with a court order;
- 10 3. The Clerk of the Court is DIRECTED to close the case; and
- 11 4. This case shall count as a strike for purposes of 28 U.S.C. § 1915(g).

12 IT IS SO ORDERED.

13 Dated: April 15, 2011



CHIEF UNITED STATES DISTRICT JUDGE