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FES DISTRICT COURT STRICT OF CALIFORNIA
STRICT OF CALIFORNIA
1:08-cv-00465-LJO-GSA-PC
FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS ACTION BE
DISMISSED, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED (Doc. 14.)
OBJECTIONS, IF ANY, DUE WITHIN THIRTY DAYS
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Plaintiff Kelvin Fuller ("Plaintiff") is a state prisoner proceeding pro se in this civil rights 19 action pursuant to 42 U.S.C. § 1983. Plaintiff commenced this action on December 17, 2007, at 20 the Fresno County Superior Court. On April 1, 2008, defendants Yates and Igbanosa removed this action to federal court. (Doc. 3.) On April 23, 2009, plaintiff filed a first amended 22 complaint. (Doc. 14.)

23 On September 9, 2009, the undersigned dismissed Plaintiff's first amended complaint for 24 failure to state a claim upon which relief may be granted and gave Plaintiff leave to file a second 25 amended complaint within thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). (Doc.16.) More than forty-five days have passed, and Plaintiff has not filed a second amended complaint or 26 27 otherwise responded to the Court's order. As a result, there is no pleading on file which sets 28 forth any claims upon which relief may be granted under section 1983.

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1	Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the undersigned
2	HEREBY RECOMMENDS that:
3	1. This action be dismissed, with prejudice, based on Plaintiff's failure to state any
4	claims upon which relief may be granted under section 1983; and
5	2. The Clerk be DIRECTED to close this case.
6	These Findings and Recommendations will be submitted to the United States District
7	Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within
8	thirty (30) days after being served with these Findings and Recommendations, any party to this
9	action may file written objections with the Court. The document should be captioned
10	"Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that
11	failure to file objections within the specified time may waive the right to appeal the District
12	Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
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14	IT IS SO ORDERED.
15	Dated: <u>November 5, 2009</u> /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE
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