

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

MARIO PADILLA,  
CDCR #C-89816,

**Plaintiff,**

J.D. HARTLEY, Warden,

Defendant.

Civil No. 08-0929 JAH (BLM)

## **ORDER DISMISSING ACTION**

I.

## PROCEDURAL HISTORY

22 On July 2, 2008, Plaintiff, an inmate currently incarcerated at Avenal State Prison located  
23 in Avenal, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C.  
24 § 1983. Plaintiff did not prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to  
25 commence a civil action; instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”)  
26 pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

27 The Court granted Plaintiff's Motion to Proceed *IFP* on July 10, 2008 [Doc. No. 4]. In  
28 addition, Plaintiff filed a Motion For Temporary Restraining Order [Doc. No. 1]. On November

1 25, 2008, this matter was reassigned to District Judge John Houston for all further proceedings  
2 [Doc. No. 6]. The Court denied Plaintiff's Motion for Temporary Restraining Order on January  
3 15, 2009 and simultaneously dismissed Plaintiff's Complaint for failing to state a claim upon  
4 which relief could be granted pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915(A)(b). *See* Jan. 15,  
5 2009 Order at 7-8. Nonetheless, the Court granted Plaintiff leave to file an Amended Complaint  
6 in order to correct the deficiencies of pleading identified in the Court's Order. *Id.* Plaintiff filed  
7 his First Amended Complaint ("FAC") on February 25, 2009.

8 On March 5, 2009, this Court dismissed Plaintiff's First Amended Complaint without  
9 prejudice for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) & § 1915A(b). Plaintiff  
10 was granted thirty (30) days leave to file a Second Amended Complaint. That time has passed  
11 and Plaintiff has not filed an Amended Complaint.

12 **II.**

13 **CONCLUSION AND ORDER**

14 Good cause appearing, **IT IS HEREBY ORDERED** that:

15 This action is **DISMISSED** without prejudice for all the reasons stated in the Court's  
16 previous Order and for failing to comply with the Court's March 5, 2009 Order. The Clerk shall  
17 enter judgment accordingly and close the file.

18  
19 DATED: April 24, 2009

20   
HON. JOHN A. HOUSTON  
United States District Judge

21  
22  
23  
24  
25  
26  
27  
28