

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
4

5 DORIAN M. AQUINO,

CASE NO. 1:09-cv-01001-LJO-GBC (PC)

6 Plaintiff,

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

M. JONES,

9 Defendant.

(ECF No. 16)

10 / CLERK TO CLOSE CASE
11

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14 **ORDER**

15 Plaintiff Dorian M. Aquino ("Plaintiff"), a state inmate, is proceeding pro se and in
16 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was
17 referred to a United State Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local
18 Rule 302.
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20 This action was filed on June 8, 2009. (ECF No. 1.) Plaintiff then filed a First
21 Amended Complaint on November 16, 2009. (ECF No. 12.) On December 20, 2010, the
22 Court dismissed the First Amended Complaint with leave to amend for failure to state any
23 cognizable claims. (ECF No. 15.) Plaintiff was given thirty days to file an amended
24 complaint and was warned that failure to do so would result in dismissal of this action. (Id.)
25

26 Plaintiff did not file anything. On February 8, 2011, the Magistrate Judge
27

1 recommended dismissal of action for failure to state a claim upon which relief may be
2 granted. (ECF No. 16.) The Magistrate Judge warned Plaintiff that if he failed to comply,
3 this action would be dismissed. Plaintiff was given thirty days to file an Objection to the
4 Findings and Recommendations. Well over thirty days passed and, to date, Plaintiff has
5 failed to file an objection or otherwise respond. As a result, there is no pleading on file
6 which sets forth any claims upon which relief may be granted.
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8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local rule 305,
9 this Court has conducted a de novo review of this case. Having carefully reviewed the
10 entire file, the Court finds the Findings and Recommendations to be supported by the
11 record and by proper analysis. Because Plaintiff never filed an amended complaint, this
12 action is subject to dismissal for Plaintiff's failure to state a claim, as set forth in the Court's
13 December 20, 2010 Order, and also subject to dismissal for Plaintiff's failure to comply with
14 that same Order.
15

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The Findings and Recommendations, filed February 8, 2011, is ADOPTED;
- 18 2. The instant action is DISMISSED WITH PREJUDICE for failure to state a
19 claim and failure to comply with a Court Order;
- 20 3. The Clerk of the Court is DIRECTED to close the case; and
- 21 4. This case shall count as a strike for purposes of 28 U.S.C. § 1915(g).

22 IT IS SO ORDERED.
23

24 Dated: May 13, 2011

/s/ Lawrence J. O'Neill
25 UNITED STATES DISTRICT JUDGE
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