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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICHOLAS V. RICH,

CASE NO. 1:09-cv-01615-MJS (PC)

Plaintiff,

ORDER DISMISSING CASE WITH
PREJUDICE FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF COULD BE
GRANTED

v.

KELLY HARRINGTON, et al.,

Defendants.

CLERK SHALL CLOSE CASE

ORDER

Plaintiff Nicholas V. Rich ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on September 15, 2009, and consented to Magistrate Judge jurisdiction on September 28, 2009. (ECF Nos. 1 & 4.)

On December 13, 2010, the Court dismissed Plaintiff's Complaint for failure to state a claim. (ECF No. 14.) Plaintiff was given thirty days to file an amended complaint and was warned that failure to do so would result in dismissal of this action. (Id.)

Plaintiff did not file anything. The Court then issued a Show Cause Order requiring

1 Plaintiff to either file an amended complaint or show cause why his action should not be
2 dismissed for failure to comply with the Court's order. (ECF No. 15.) The Court warned
3 Plaintiff that if he failed to comply, his action would be dismissed for failure to prosecute
4 with prejudice. Plaintiff's response to the Show Cause Order was due February 18, 2011.
5

6 Plaintiff has failed to file an amended complaint or otherwise respond to the Court's
7 Order. As a result, there is no pleading on file which sets forth any claims upon which relief
8 may be granted.

9 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action is
10 HEREBY DISMISSED, with prejudice, based on Plaintiff's failure to state any claims upon
11 which relief may be granted under Section 1983. This dismissal SHALL count as a strike
12 under 28 U.S.C. § 1915(g). The Clerk shall close the case.
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15 IT IS SO ORDERED.

16 Dated: February 28, 2011

17 Isl. Michael J. Seng
18 UNITED STATES MAGISTRATE JUDGE
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