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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY GASTON,

Plaintiff,

v.

LARRY DELIO, et al.,

Defendants.

CASE NO. 1:09-cv-1966-OWW-MJS (PC)

FINDINGS AND RECOMMENDATION
RECOMMENDING THAT CASE BE
DISMISSED WITH PREJUDICE FOR
FAILURE TO STATE A CLAIM UPON WHICH
RELIEF COULD BE GRANTED

(ECF No. 18)

_____/ OBJECTIONS DUE WITHIN THIRTY DAYS

Plaintiff Anthony Gaston ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On December 23, 2010, the Court ordered that Plaintiff's Complaint be dismissed for failure to state a claim. (ECF No. 18.) 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.) The Court granted Plaintiff's motion for an extension, which resulted in his amended complaint being due March 1, 2011. (ECF No. 21.)

To date, Plaintiff has failed to file an amended complaint. As a result, there is no pleading on file which sets forth any claims upon which relief may be granted. Accordingly, the Court RECOMMENDS the following:

1. Plaintiff's claims be dismissed with prejudice for failure to state a claim upon which relief could be granted;
2. This action be closed; and

1 3. This dismissal count as a “strike” for purposes of 28 U.S.C. § 1915(g).

2 These Findings and Recommendations are submitted to the United States District
3 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Not
4 later than March 20, 2011, Plaintiff may file written objections with the Court and serve a
5 copy on all parties. Such a document should be captioned “Objections to Magistrate
6 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections
7 within the specified time may waive the right to appeal the District Court’s order. Martinez
8 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9
10 IT IS SO ORDERED.

11 Dated: March 7, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE