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## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

1:09-cv-02097-AWI-GSA-PC

Plaintiff,

WARDEN OF PLEASANT VALLEY STATE PRISON, et al.,

ANTHONEY LYNCH,

v.

Defendants.

FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS ACTION BE DISMISSED, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED (Doc. 22.)

OBJECTIONS, IF ANY, DUE IN THIRTY DAYS

Anthoney Lynch ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 2, 2009. (Doc. 1.) On May 1, 2012, the Court dismissed Plaintiff's First Amended Complaint for failure to state a claim, with leave to file a Second Amended Complaint. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). (Doc. 28.) Plaintiff has requested and been granted three extensions of time to file the Second Amended Complaint. (Docs. 30, 31, 32, 33, 34, 36.) The deadlines have now expired, and Plaintiff has not filed a Second Amended Complaint or otherwise responded to the Court's most recent order granting Plaintiff an extension of time. As a result, there is no pleading on file which sets forth any claims upon which relief may be granted.

Accordingly, IT IS HEREBY RECOMMENDED that pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action be DISMISSED, with prejudice, based on Plaintiff's failure to state

a claim upon which relief may be granted under section 1983, and that this dismissal be subject to the "three-strikes" provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011).

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within thirty days after being served with these findings and recommendations, Plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: October 11, 2012 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE