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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

LEROY DEWITT HUNTER,		NO. 1:10-cv-00099-GSA-PC
	)	ORDER DISMISSING ACTION
Plaintiff,	)	
	)	
v.	)	
	)	
C/O RUBIO, et al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

By order filed September 28, 2011, the operative complaint was dismissed for failure to state a claim. Plaintiff was granted leave to file an amended complaint, and directed to do so within thirty days. Plaintiff has not filed an amended complaint. Court records indicate that the order was served upon Plaintiff at his address of record and were returned by the U.S. Postal Service with the indication that Plaintiff refused delivery.

In the September 28, 2011, order the Court informed Plaintiff of the deficiencies in his complaint, and dismissed the complaint on the ground that Plaintiff had failed to state a claim upon which relief could be granted. Because Plaintiff has not filed an amended complaint, the Court dismisses the claims made in the original complaint with prejudice for failure to state a

1 federal claim upon which the court could grant relief. See Noll v. Carlson, 809 F. 2d 1446, 1448  
2 (9<sup>th</sup> Cir. 1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to  
3 dismissing for failure to state a claim).

4           Accordingly, IT IS HEREBY ORDERED that this action is dismissed for failure to state  
5 a claim upon which relief can be granted. The Clerk is directed to close this case.

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IT IS SO ORDERED.

**Dated: October 28, 2011**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE