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

|                   |   |                               |
|-------------------|---|-------------------------------|
| KELVIN ALLEN,     | ) | NO. 1:10-cv-00183 GSA PC      |
|                   | ) |                               |
| Plaintiff,        | ) | ORDER DISMISSING ACTION       |
|                   | ) |                               |
| v.                | ) |                               |
|                   | ) |                               |
| T. SCOTT, et al., | ) | ORDER THAT DISMISSAL COUNTS   |
|                   | ) | AS A STRIKE UNDER 28 U.S.C. § |
| Defendants.       | ) | 1915(G)                       |

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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 April 1, 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 was granted three extensions of time in which to file an amended complaint. The most recent thirty day extension of time was granted on August 4, 2011. Plaintiff has not filed an amended complaint.

In the April 1, 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, and that this dismissal count as a strike under 28  
6 U.S.C. § 1915(g). The Clerk is directed to close this case.

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11 IT IS SO ORDERED.

12 **Dated: September 19, 2011**

/s/ Gary S. Austin  
13 UNITED STATES MAGISTRATE JUDGE