

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GREGORIO C. FUNTANILLA, JR.,

CASE NO. 1:10-cv-01048-LJO-SKO PC

Plaintiff,

ORDER DISMISSING ACTION, WITH  
PREJUDICE, FOR FAILURE TO STATE  
A CLAIM UPON WHICH RELIEF MAY  
BE GRANTED UNDER SECTION 1983

v.

DAVID TRISTAN, et al.,

(Docs. 7 and 9)

Defendants.

ORDER COUNTING DISMISSAL AS A  
STRIKE UNDER 28 U.S.C. § 1915(G)

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Plaintiff Gregorio C. Funtanilla, Jr., a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 9, 2010. On June 3, 2011, the Court dismissed Plaintiff's amended complaint for failure to state a claim, and ordered Plaintiff to file a second amended complaint within thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). To date, Plaintiff has not complied with or otherwise responded to the Court's order. As a result, there is no pleading on file which sets forth a claim upon which relief may be granted.

Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action is **HEREBY DISMISSED**, with prejudice, based on Plaintiff's failure to state a claim upon which relief may be granted under section 1983. This dismissal **SHALL** count as a strike under 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

**Dated:** August 15, 2011

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE