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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARCUS J. BARNHARDT,

Plaintiff,

v.

CASE NO. 1:10-cv-01351-LJO-GBC (PC)

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
PLAINTIFF'S ACTION WITH PREJUDICE
FOR FAILURE TO STATE A CLAIM

MATTHEW CATE, et al.,

Defendants.

OBJECTIONS DUE WITHIN THIRTY DAYS

FINDINGS AND RECOMMENDATION

Plaintiff Marcus J. Barnhardt ("Plaintiff") is state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On June 15, 2011, the Court dismissed Plaintiff's original complaint, with leave to amend, for failure to state a claim. (ECF No. 8.) Plaintiff was ordered to file an amended complaint within thirty days.

(Id.) Plaintiff also was warned that failure to comply with the Court's Order may result in dismissal of this action for failure to state a claim upon which relief could be granted. (Id.)

On July 21, 2011, the Court issued a Show Cause Order. (ECF No. 9.) The Show Cause Order again warned Plaintiff that the case would be dismissed if Plaintiff failed to respond to the Order and/or file an amended complaint by August 25, 2011. (Id.) To date,

1 the Court has not received a response to the Show Cause Order and Plaintiff has not filed
2 an amended complaint. As a result, there is no pleading on file which sets forth any claims
3 upon which relief may be granted.
4

5 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the Court
6 HEREBY RECOMMENDS that this action be DISMISSED, with prejudice, based on
7 Plaintiff's failure to state any claims upon which relief may be granted under Section 1983.

8 These Findings and Recommendation will be submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
10 thirty (30) days after being served with these Findings and Recommendation, the parties
11 may file written objections with the Court. The document should be captioned "Objections
12 to Magistrate Judge's Findings and Recommendation." The parties are advised that failure
13 to file objections within the specified time may waive the right to appeal the District Court's
14 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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16 IT IS SO ORDERED.

17 Dated: September 2, 2011

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20 UNITED STATES MAGISTRATE JUDGE
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