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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ROBERT ANTHONY WINTERS,

CASE NO. 1:10-cv-02115-SKO PC

Plaintiff,

ORDER DISMISSING ACTION, WITHOUT  
PREJUDICE

v.

(Docs. 13 and 19)

MATTHEW L. CATE, et al.,

Defendants.

Plaintiff Robert Anthony Winters, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 8, 2010. On April 18, 2011, the Court screened Plaintiff’s complaint and dismissed it, with leave to amend, for failure to comply with Federal Rule of Civil Procedure 8(a). 28 U.S.C. § 1915A. The Court provided Plaintiff with detailed instructions regarding compliance with Rule 8(a) and Federal Rule of Civil Procedure 18(a), and granted Plaintiff thirty days within which to amend. In separate orders filed concurrently, the Court denied Plaintiff’s motion for a preliminary injunction and denied Plaintiff’s motions for an order to produce his trust account statement and for sanctions.

On May 11, 2011, Plaintiff appealed all three orders, and on May 18, 2011, citing to Yourish v. California Amplifier, 191 F.3d 983 (9th Cir. 1999) and WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc), Plaintiff notified the Court of his intent not to amend in compliance with the screening order. The appellate court limited Plaintiff’s appeal to the denial of his motion for a preliminary injunction on May 26, 2011, and summarily affirmed the Court’s ruling on August 2, 2011.

1 In light of the appellate court's resolution of Plaintiff's appeal, the Court now considers  
2 Plaintiff's notice filed on May 18, 2011. Plaintiff has exercised his right to stand on his pleading by  
3 notifying the Court that he does not intend to file an amended complaint. Edwards v. Marin Park,  
4 Inc., 356 F.3d 1058, 1064-65 (9th Cir. 2004). In such a situation, the Court is constrained to accept  
5 Plaintiff's election and dismiss the action. Id. at 1064.

6 Accordingly, this action is HEREBY ORDERED DISMISSED, without prejudice, for failure  
7 to comply with Rule 8(a), and the Clerk of the Court shall enter judgment. Id.

8  
9 IT IS SO ORDERED.

10 **Dated:** August 8, 2011

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE