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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

THOMAS L. DAVIS,	CASE NO. 1:10-cv-02219-OWW-SKO PC
Plaintiff,	ORDER DISMISSING ACTION, WITH
v.	PREJUDICE, FOR FAILURE TO STATE
UNITED STATES OF AMERICA,	A CLAIM UPON WHICH RELIEF MAY
Defendant.	BE GRANTED
	(Doc. 8)
	ORDER COUNTING DISMISSAL AS A
	STRIKE UNDER 28 U.S.C. § 1915(G)

Plaintiff Thomas L. Davis, a federal prisoner proceeding pro se and in forma pauperis, filed this civil action pursuant to the Federal Tort Claims Act (FTCA) on November 30, 2010. 28 U.S.C. § 1346(b). On February 24, 2011, the Court dismissed Plaintiff's complaint for failure to state a claim, and ordered Plaintiff to file an 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 any claims 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

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1 relief may be granted under the FTCA or Bivens.<sup>1</sup> This dismissal SHALL count as a strike under  
2 28 U.S.C. § 1915(g).

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4 IT IS SO ORDERED.

5 **Dated:** May 9, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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27 <sup>1</sup> Although Plaintiff filed suit under the FTCA, the Court also addressed the possibility of a claim against  
28 individual prison officials under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S.  
388, 91 S.Ct. 1999 (1971), and Plaintiff was given notice and an opportunity to amend a claim under that theory.