IN THE UNITED	STATES DISTRICT COURT FOR THE
EASTER	N DISTRICT OF CALIFORNIA
FERMIN JULIAN LAYOS,	NO. 1:11-cv-02144 LJO GSA PC
Plaintiff, v.	) ) FINDINGS AND ) RECOMMENDATIONS THAT THI ) ACTION BE DISMISSED FOR ) FAILURE TO STATE A CLAIM
E. CONANAN, et al.,	) UPON WHICH RELIEF COULD BE ) GRANTED
Defendan	) ts. ) OBJECTIONS DUE IN TWENTY ) DAYS

Plaintiff is a state prisoner proceeding pro se in this civil rights action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

By order filed November 30, 2102, the Court issued an order dismissing the operative complaint for failure to state a claim and directing Plaintiff to file an amended complaint within thirty days. Plaintiff has not filed an amended complaint.

In the November 30, 2012, 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 will recommend that Plaintiff's complaint be dismissed without leave to amend. <u>See Lopez v. Smith</u>, 203 F.3d 1122, 1127 (9th Cir. 2007) (recognizing longstanding rule that leave to

amend should be granted even if no request to amend was made unless the court determines that
the pleading could not possibly be cured by the allegation of other facts); <u>Noll v. Carlson</u>, 809
F.2d 1446, 1448 (9th Cir. 1987) (pro se litigant must be given leave to amend his or her
complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by
amendment). <u>See Ferdik v. Bonzelet</u>, 963 F.2d 1258, 1261 (9th Cir. 1992)(dismissal with
prejudice upheld where court had instructed plaintiff regarding deficiencies in prior order
dismissing claim with leave to amend).

8 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for failure
9 to state a claim upon which relief can be granted, and that this action count as a strike under 28
10 U.S.C. § 1915(g).

These findings and recommendations are submitted to the United States District 11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within 12 13 twenty days after being served with these findings and recommendations, plaintiff may file 14 written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file 15 objections within the specified time waives all objections to the judge's findings of fact. See 16 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). Failure to file objections within the 17 18 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 19

IT IS SO ORDERED.

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Dated: <u>January 7, 2013</u>

/s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE