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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRZYSZTOF WOLINSKI,

Plaintiff,

v.

N. ACOSTA, et al.,

Defendants.

Case No. 1:15-cv-00519-LJO-SAB-PC

FINDINGS AND RECOMMENDATION
THAT THIS ACTION BE DISMISSED FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF COULD BE GRANTED
AND THAT THIS ACTION COUNT AS A
STRIKE UNDER 28 U.S.C. §1915(g).

OBJECTIONS DUE IN THIRTY DAYS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

By order filed September 1, 2015, the Court dismissed the complaint (ECF No.14) for failure to state a claim and directed Plaintiff to file an amended complaint within thirty days. Plaintiff has not filed an amended complaint.

In the September 1, 2015 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 dismisses the claims made in the original complaint with prejudice for failure to state a claim upon which the Court could grant relief. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2007)(recognizing longstanding rule that leave to amend should be granted even if no

1 request to amend was made unless the court determines that the pleading could not be cured by
2 the allegation of other facts); Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)(pro se
3 litigant must be given leave to amend his or her complaint unless it is absolutely clear that the
4 deficiencies of the complaint could not be cured by amendment). See Ferdik v. Bonzelet, 963
5 F.2d 1258, 1261 (9th Cir. 1992)(dismissal with prejudice upheld where court had instructed
6 plaintiff regarding deficiencies in prior order dismissing claim with leave to amend).

7 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for failure
8 to state a claim upon which relief can be granted, and that this action count as a strike under 18
9 U.S.C. § 1915(g).

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 18 U.S.C. § 636(b)(1)(B). Within thirty days
12 after being served with these findings and recommendations, Plaintiff may file written objections
13 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s
14 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
15 specified time may result in waiver of rights on appeal. Wilkerson v. Wheeler, 77 F.3d 834 (9th
16 Cir. 2014)(citing Baxter v. Sullivan), 923 F.2d 1394 (9th Cir. 1991)).

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19 IT IS SO ORDERED.

20 Dated: October 16, 2015



UNITED STATES MAGISTRATE JUDGE

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