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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 DAVID KNAPP,

12 Plaintiff,

13 vs.

14 VIRK, et al.,

15 Defendants.
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1:15-cv-00961-GSA-PC

ORDER DISMISSING CASE, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM
(ECF No. 19.)

ORDER THAT THIS DISMISSAL IS
SUBJECT TO THE "THREE STRIKES"
PROVISION OF 28 U.S.C. § 1915(g)

ORDER FOR CLERK TO CLOSE CASE

20 **I. BACKGROUND**

21 David Knapp ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
22 with this civil rights action pursuant to 42 U.S.C. § 1983. On June 25, 2015, Plaintiff filed the
23 Complaint commencing this action. (ECF No. 1.)

24 On July 6, 2015, Plaintiff consented to Magistrate Judge jurisdiction in this action
25 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 5.)
26 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
27 California, the undersigned shall conduct any and all proceedings in the case until such time as
28 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 On November 4, 2015, the court dismissed the Complaint for failure to state a claim,
2 with leave to amend within thirty days. (ECF No. 6.) Plaintiff requested and was granted four
3 extensions of time. (ECF Nos. 7, 8, 9, 10, 11, 12, 13, 14.) The final deadline to amend the
4 Complaint expired, and Plaintiff did not file an amended complaint. (Court record.) On June
5 30, 2016, the court issued an order to show cause, requiring Plaintiff to show cause why this
6 case should not be dismissed for failure to prosecute. (ECF No. 16.) After being granted
7 another extension of time, Plaintiff filed the First Amended Complaint on August 9, 2016.
8 (ECF No. 19.) The court then discharged the order to show cause. (ECF No. 20.)

9 On March 30, 2017, the court dismissed the First Amended Complaint for failure to
10 state a claim, with leave to amend within thirty days. (ECF No. 23.) Plaintiff requested and
11 was granted an extension of time. (ECF Nos. 24, 25.) The latest deadline has now expired, and
12 Plaintiff has not filed the Second Amended Complaint. (Court record.)

13 In the March 30, 2017 order, the court informed Plaintiff of the deficiencies in the First
14 Amended Complaint and dismissed it on the ground that Plaintiff had failed to state a claim
15 upon which relief could be granted. As a result, there is no pleading on file in this case which
16 sets forth any claims upon which relief may be granted. Plaintiff was forewarned in the March
17 30, 2017 order that this case would be dismissed for failure to state a claim if he did not file the
18 Second Amended Complaint. (ECF No. 23 at 9 ¶5.) Therefore, the Court now dismisses the
19 claims made in the First Amended Complaint, with prejudice, for failure to state a claim upon
20 which the Court could grant relief. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)
21 (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing for
22 failure to state a claim).

23 **II. CONCLUSION**

24 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 25 1. This case is dismissed, with prejudice, for failure to state a claim upon which
26 relief may be granted;

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- 2. This dismissal is subject to the “three strikes” provision of 28 U.S.C. § 1915(g);
and
- 3. The Clerk is directed to close this case.

IT IS SO ORDERED.

Dated: July 7, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE