

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 FRANK GALLARDO,

11 Plaintiff,

No. CIV S-10-1263 KJN (TEMP) P

12 vs.

13 M. CATE, et al.,

14 Defendants.

ORDER

15 \_\_\_\_\_/  
16 Plaintiff is a state prisoner proceeding without counsel. On May 28, 2010  
17 plaintiff filed a consent to proceed before the undersigned. By order filed March 29, 2011,  
18 plaintiff's amended complaint was dismissed for failure to state a claim upon which relief can be  
19 granted. Plaintiff was instructed how to cure the deficiencies in his pleadings and given thirty  
20 days within which to file a second amended complaint. Plaintiff was warned that failure to file a  
21 second amended complaint which complies with all of the terms of the March 29, 2011 order  
22 would result in dismissal.

23 On April 29, 2011, plaintiff file a document titled "second amended complaint."  
24 However, there is no material difference between the content of the "second amended complaint"  
25 and plaintiff's amended complaint. In light of this, and because giving plaintiff leave to file a  
26 third amended complaint appears futile, plaintiff's second amended complaint will be dismissed


1 for failure to state a claim upon which relief can be granted and this case will be closed.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiff's second amended complaint is dismissed for failure to state a claim  
4 upon which relief can be granted; and

5 2. This case is closed.

6 DATED: May 5, 2011

7  
8   
9 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

10 gall1263.dis