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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOE VASQUEZ,

Plaintiff,

No. CIV S-10-3254 MCE GGH (P)

vs.

ARNOLD SCHWARZENEGGER et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se who seeks relief pursuant to U.S.C. § 1983. On January 3, 2011, the undersigned filed an order dismissing the complaint for failure to state a constitutional claim and giving plaintiff leave to file an amended complaint within twenty-eight days. On January 27, 2011, plaintiff filed a motion for reconsideration of the magistrate judge’s order. On March 21, 2011, the district judge affirmed the magistrate judge’s order.

To date, plaintiff has not filed an amended complaint. Rather, on April 21, 2011, he filed a brief “object[ing] to both the magistrate order filed January 3, 2011 and the . . . district judge order filed March 18, 2011.” (Doc. #15.) Plaintiff’s filing is not one contemplated by the Federal Rules of Civil Procedure. Therefore plaintiff’s objection, noted on the case docket as a second “motion for reconsideration,” will be denied as inapposite.

1 Furthermore, plaintiff has failed to file an amended complaint within twenty-eight
2 days of either the magistrate judge's January 3, 2011 order or the district judge's March 21, 2011
3 affirmation of that order. Thus, for the reasons given in the January 3, 2011 order, this action
4 will be dismissed with prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

5 Accordingly, IT IS HEREBY ORDERED that plaintiff's April 21, 2011 motion
6 for reconsideration (Doc. #15) is denied as inapposite.

7 Also, IT IS HEREBY RECOMMENDED, for the reasons given in the January 3,
8 2010 order, that this action be dismissed with prejudice. See Local Rule 110; Fed. R. Civ. P.
9 41(b).

10 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). Within
12 fourteen (14) days after being served with these findings and recommendations, plaintiff may file
13 written objections with the court. The document should be captioned "Objections to Magistrate
14 Judge's Findings and Recommendations." Any response to the objections shall be filed and
15 served within fourteen days after service of the objections. Plaintiff is advised that failure to file
16 objections within the specified time may waive the right to appeal the District Court's order.

17 DATED: May 5, 2011

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19 /s/ Gregory G. Hollows

20 UNITED STATES MAGISTRATE JUDGE

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