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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,

1:12-cv-01846-AWI-GBC (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING ACTION  
WITH PREJUDICE FOR FAILURE TO STATE  
A CLAIM

v.

KERN COUNTY SHERIFF’S DEPT., et al.,

(Doc. 1; Doc. 4)

Defendants.

OBJECTIONS DUE IN FOURTEEN DAYS

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**I. Factual and Procedural Background**

Gary Dale Barger (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Doc. 1. On November 8, 2012, Plaintiff filed his complaint which initiated this action. Doc. 1. On November 28, 2012, the Court dismissed the action for failure to state a claim and gave Plaintiff leave to amend within fourteen days. Doc. 4. In the order filed on November 28, 2012, the Court warned Plaintiff that if he failed to file an amended complaint in compliance with the order, this action would be dismissed, with prejudice, for failure to state any claims. The deadline to file an amended complaint has passed and Plaintiff has not complied with or otherwise responded to the Court’s order. As a result, there is no pleading on file which sets forth any claims upon which relief may be granted.

Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the Court HEREBY RECOMMENDS that:

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- 1           1.       this action be DISMISSED, with prejudice, based on Plaintiff's failure to state any
- 2                       claims upon which relief may be granted (Doc. 1; Doc. 4); and
- 3           2.       The Clerk's Office be directed to enter judgment against Plaintiff.
- 4

5           These Findings and Recommendations will be submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14)  
7 days after being served with these Findings and Recommendations, Plaintiff may file written  
8 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
9 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
10 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d  
11 1153 (9th Cir. 1991).

12  
13 IT IS SO ORDERED.

14 Dated:    December 26, 2012

15   
16 UNITED STATES MAGISTRATE JUDGE