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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JEANETTE SMITH,

12 Plaintiff,

13 vs.

14 DR. LARGOZA, et al.,

15 Defendants.
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1:12-cv-00503-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE WITH PREJUDICE
FOR PLAINTIFF'S FAILURE TO STATE
A CLAIM
(Doc. 9.)

OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS

17 On October 11, 2013, the court issued an order dismissing Plaintiff's Complaint, with
18 leave to file an amended complaint within thirty days. (Doc. 9.) In the October 11, 2013,
19 order, the court informed Plaintiff of the deficiencies in her Complaint, and dismissed the
20 Complaint on the ground that Plaintiff had failed to state a claim upon which relief could be
21 granted. To date, Plaintiff has not complied with or otherwise responded to the court's order.¹
22 As a result, there is no pleading on file which sets forth any claims upon which relief may be
23 granted.

24 Because Plaintiff has not filed an amended complaint, the court recommends that
25 Plaintiff's claims made in the original Complaint be dismissed with prejudice for failure to state
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28 ¹ The United States Postal Service returned the order on April 22, 2013 as undeliverable. A notation on
the envelope indicates that Plaintiff was paroled. However, Plaintiff has not notified the court of any change in his
address. Absent such notice, service at a party's prior address is fully effective. Local Rule 182(f).

1 a claim upon which the court could grant relief. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th
2 Cir.1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to
3 dismissing for failure to state a claim).

4 Accordingly, **IT IS HEREBY RECOMMENDED** that:

5 1. Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action be
6 DISMISSED, with prejudice, based on Plaintiff's failure to state a claim upon which relief may
7 be granted under § 1983; and

8 2. This dismissal be subject to the "three-strikes" provision set forth in 28 U.S.C. §
9 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011).

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

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20 IT IS SO ORDERED.

21 Dated: November 21, 2013

/s/ Gary S. Austin
22 UNITED STATES MAGISTRATE JUDGE