

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA

7 JOHN MICHAEL CRIM,

8 Plaintiff,

9 vs.

10 MANAGEMENT & TRAINING CORP., et al.,

11 Defendants.

1:12-cv-01340-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS THIS ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM

12 OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

13
14 John Michael Crim ("Plaintiff") is a federal prisoner proceeding pro se. This action was
15 initiated by civil Complaint filed by Plaintiff in the Kern County Superior Court on June 12,
16 2012 (Case #S-1500-CV-276883-WDP). (Doc. 2-2 at 8-30.) On August 16, 2012, defendants
17 Management & Training Corp., Adler, Stewart, Mann, Patrick, Logan, McBride, and Sy
18 ("Removing Defendants") removed the case to federal court by filing a Notice of Removal
19 pursuant to 28 U.S.C. § 1441(a) (federal question). (Doc. 1.)

20 On November 19, 2013, the Court dismissed Plaintiff's Complaint for failure to state a
21 claim, with leave to file an amended complaint within thirty days. (Doc. 6.) 28 U.S.C. §
22 1915A; 28 U.S.C. § 1915(e). In the November 19, 2013 order, the Court informed Plaintiff of
23 the deficiencies in his Complaint, and dismissed the Complaint on the ground that Plaintiff had
24 failed to state a claim upon which relief could be granted. To date, Plaintiff has not complied
25 with the Court's order.¹ As a result, there is no pleading on file which sets forth any claims
26 upon which relief may be granted.

27
28 ¹ However, Plaintiff filed two motions for reconsideration of the Court's screening order, both which
were denied. (Docs. 21-24.)

1 Because Plaintiff has not filed an amended complaint, the Court shall recommend
2 dismissal of the claims made in the original complaint with prejudice for failure to state a claim
3 upon which the Court could grant relief. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th
4 Cir.1987)(prisoner must be given notice of deficiencies and opportunity to amend prior to
5 dismissing for failure to state a claim).

6 Accordingly, the court **HEREBY RECOMMENDS** that:

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

10 2. This dismissal be subject to the "three-strikes" provision set forth in 28 U.S.C. §
11 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011).

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

19
20
21
22 IT IS SO ORDERED.

23 Dated: January 30, 2014

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