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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 KIPP ARON WOODS,

9 Plaintiff,

10 v.

11 SHANNON LESLIE MARTIN, et al.,

12 Defendants.  
13

CASE No. 1:13-cv-01621-AWI-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING THIS  
ACTION WITHOUT LEAVE TO AMEND  
FOR FAILURE TO STATE A CLAIM

(ECF No. 1)

OBJECTIONS DUE WITHIN THIRTY  
DAYS

14  
15 Plaintiff, Kipp Aron Woods is a state prisoner proceeding pro se and in forma pauperis  
16 pursuant to 42 U.S.C. § 1983. Plaintiff filed a complaint in this action on October 9, 2013. (ECF  
17 No. 1.)

18 **I.**

19 **SCREENING REQUIREMENT**

20 The Court is required to screen complaints brought by prisoners seeking relief against a  
21 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
22 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
23 “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that  
24 “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §  
25 1915(e)(2)(B).

26 A complaint must contain “a short and plain statement of the claim showing that the  
27 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
28 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
2 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

## 3 II.

### 4 DISCUSSION

5 Federal courts are courts of limited jurisdiction having subject matter-jurisdiction only  
6 over matters authorized by the United States Constitution or Congress. Kokkonen v. Guardian  
7 Life Ins. Co. of America, 511 U.S. 375, 377 (1994). In order to have subject matter jurisdiction,  
8 the claims raised in a complaint must involve a federal question or diversity of citizenship. 28  
9 U.S.C. §§ 1331, 1332. In the complaint, Plaintiff alleges that on January 19, 2012, Defendant  
10 Martin, his ex-wife, intended to inflict injury on him by pointing a gun at him and firing it.  
11 Additionally, Plaintiff claims that on March 11, 2012, Defendants Martin and Dong attempted to  
12 have him murdered. Plaintiff seeks damages for personal injury, loss of two years of liberty, and  
13 emotional distress.

14 To the extent that Plaintiff is attempting to bring this action under 28 U.S.C. § 1983,  
15 liability under section 1983 exists where a defendant “acting under the color of law” has deprived  
16 the plaintiff “of a right secured by the Constitution or laws of the United States.” Jensen v. Lane  
17 County, 222 F.3d 570, 574 (9th Cir. 2000). “The United States Constitution protects individual  
18 rights only from government action, not from private action.” Single Moms, Inc. v. Montana  
19 Power Co., 331 F.3d 743, 746 (9th Cir. 2003) (emphasis in original). “Only when the government  
20 is responsible for a plaintiff’s complaints are individual constitutional rights implicated.” Single  
21 Moms, Inc., 331 F.3d at 746-47 (citing Brentwood Academy v. Tennessee Secondary School  
22 Athletic Assoc., 531 U.S. 288, 295, 121 S. Ct. 924, 930 (2001)) (emphasis in original).

23 Plaintiff has not alleged any claims that raise a federal cause of action, nor are they based  
24 upon diversity of citizenship. The Court recommends that this action be dismissed, without leave  
25 to amend, for failure to state a claim.

## 26 III.

### 27 CONCLUSION AND RECOMMENDATIONS

28 The Court finds that Plaintiff’s complaint fails to state a claim upon which relief can be

1 granted. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend ‘shall be freely  
2 given when justice so requires,’” Fed. R. Civ. P. 15(a), and “[l]eave to amend should be granted if  
3 it appears at all possible that the plaintiff can correct the defect,” Lopez v. Smith, 203 F.3d 1122,  
4 1130 (9th Cir. 2000) (internal citations omitted). However, the Court finds that the deficiencies  
5 outlined above are not capable of being cured by amendment, and therefore leave to amend should  
6 not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Noll v. Carlson, 809 F. 2d 1446, 1448-49 (9th Cir.  
7 1987).

8 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the Court HEREBY  
9 RECOMMENDS that this action is be DISMISSED, without leave to amend, for failure to state a  
10 claim.

11 These findings and recommendations are submitted to the district judge assigned to this  
12 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within thirty (30)  
13 days of service of this recommendation, Plaintiff may file written objections to these findings and  
14 recommendations with the Court. Such a document should be captioned “Objections to  
15 Magistrate Judge’s Findings and Recommendations.” The district judge will review the  
16 magistrate judge’s findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff  
17 is advised that failure to file objections within the specified time may waive the right to appeal the  
18 district judge’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 IT IS SO ORDERED.

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21 Dated: October 11, 2013

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24 UNITED STATES MAGISTRATE JUDGE  
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