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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MONTE WEATHERINGTON,

12 Plaintiff,

13 vs.

14 S. RIOS, et al.,

15 Defendants.
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1:14-cv-00906-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED FOR FAILURE TO STATE A
CLAIM, WITH PREJUDICE
(ECF No. 18.)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS

18 Monte Weatherington (“Plaintiff”) is a state prisoner proceeding pro se in this civil
19 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this
20 action on June 12, 2014. (ECF No. 1.) The court screened the Complaint and issued an order
21 on March 16, 2015, requiring Plaintiff to either file an amended complaint or notify the court
22 that he is willing to proceed with the claims found cognizable by the court. (ECF No. 7.) On
23 June 1, 2015, Plaintiff filed the First Amended Complaint. (ECF No. 13.)

24 On April 27, 2016, the court dismissed the First Amended Complaint for failure to state
25 a claim, with leave to amend. (ECF No. 16.) On June 6, 2016, Plaintiff filed the Second
26 Amended Complaint. (ECF No. 18.) On March 6, 2017, the court issued a screening order
27 dismissing the Second Amended Complaint for failure to state a claim, with leave to file a
28 Third Amended Complaint within thirty days. (ECF No. 22.) The thirty-day deadline has

1 expired, and Plaintiff has not filed a Third Amended Complaint or otherwise responded to the
2 screening order.¹ As a result, there is no pleading on file which sets forth any claims upon
3 which relief may be granted.

4 Accordingly, **IT IS HEREBY RECOMMENDED** that pursuant to 28 U.S.C. § 1915A
5 and 28 U.S.C. § 1915(e), this action be DISMISSED, with prejudice, based on Plaintiff's failure
6 to state a claim upon which relief may be granted under section 1983, and that this dismissal be
7 subject to the "three-strikes" provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658
8 F.3d 1090, 1098 (9th Cir. 2011).

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
11 **(14) days** after being served with these findings and recommendations, Plaintiff may file
12 written objections with the court. Such a document should be captioned "Objections to
13 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
14 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
15 Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
16 (9th Cir. 1991)).

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18 IT IS SO ORDERED.

19 Dated: April 20, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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27 ¹ The United States Postal Service returned the order on March 15, 2017, as undeliverable. A notation on the
28 envelope indicates "RTS-Paroled/Discharged. 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).