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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MAURICE HUNT,  
Plaintiff,  
v.  
A. MATEVOUSIAN, et al.,  
Defendants.

Case No. 1:15-cv-01457-DAD-SAB-PC  
ORDER REGARDING PLAINTIFF'S  
MOTION REQUESTING ISSUANCE OF  
FINDINGS AND RECOMMENDATION  
[ECF No. 37]  
FINDINGS AND RECOMMENDATION  
RECOMMENDING DISMISSAL OF  
ACTION FOR FAILURE TO STATE A  
COGNIZABLE CLAIM FOR RELIEF  
[ECF No. 13]  
THIRTY-DAY DEADLINE

Plaintiff Maurice Hunt is a federal prisoner proceeding pro se and in forma pauperis pursuant to Bivens v. Six Unknown Named Agent, 403 U.S. 388 (1961). Plaintiff declined United States Magistrate Judge jurisdiction; therefore, this matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Currently before the Court is Plaintiff's motion requesting the undersigned to issue findings and recommendations to the District Judge, filed November 7, 2016. (ECF No. 37.)

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1 **I.**

2 **BACKGROUND**

3 Plaintiff filed his original complaint on September 25, 2015, (ECF No. 1), and before it  
4 was screened by the undersigned, he sought leave to file an amended complaint, (ECF No. 8).  
5 Leave was granted, (ECF No. 9), and on December 31, 2015, Plaintiff filed a first amended  
6 complaint, (ECF No. 13).

7 The undersigned screened the first amended complaint on January 27, 2016, and  
8 dismissed it for failure to state a cognizable claim, with leave to amend within thirty days. (ECF  
9 No. 14.) On February 23, 2016, Plaintiff filed objections to the order dismissing his first  
10 amended complaint, (ECF No. 16), which were overruled, (ECF No. 17). Plaintiff then filed  
11 objections to the Court's January 27, 2016 screening order with the District Judge, on March 4,  
12 2016. (ECF No. 19.)

13 In the meantime, on March 16, 2016, Plaintiff filed an interlocutory appeal of the Court's  
14 January 27, 2016 screening order with the Ninth Circuit Court of Appeals, (ECF No. 20), and on  
15 March 25, 2016, Plaintiff filed a pleading in this action, (ECF No. 24). On May 18, 2016, the  
16 Ninth Circuit dismissed Plaintiff's interlocutory appeal for lack of jurisdiction. (ECF No. 27.) On  
17 June 6, 2016, Plaintiff filed a notice with the Court stating that he did not intend to further amend  
18 his pleading, (ECF No. 28), and on June 24, 2016, he filed a motion for the status of the case,  
19 (ECF No. 29). On June 28, 2016, the Court informed Plaintiff that it would screen Plaintiff's  
20 pleading in due course. (ECF No. 30.) On July 13, 2016, the Ninth Circuit issued its mandate that  
21 its May 18, 2016 dismissal took effect. (ECF No. 31.)

22 Shortly thereafter, on August 26, 2016, Plaintiff moved the Court to correct the docket,  
23 stating that the pleading he filed on March 25, 2016 was not meant to be a second amended  
24 complaint in this action, and was instead meant to be a separate, new case. (ECF No. 35.)  
25 Plaintiff also filed a notice requesting the status of this case. (ECF No. 33.) On October 21, 2016,  
26 the Court granted Plaintiff's motion to correct the docket, and directed the Clerk of the Court to  
27 file his March 25, 2016 pleading as a new case. (ECF No. 35.) As a result, there was no second  
28 amended complaint docketed in this matter.

1 Following this clarification of the docket, on November 3, 2016, the District Judge then  
2 addressed Plaintiff's objections to the January 27, 2016 screening order. (ECF No. 36). The  
3 District Judge construed Plaintiff's request as a motion for reconsideration of the undersigned's  
4 prior ruling, and denied that motion. (ECF No. 36, pp. 1-4.) Plaintiff was also granted another  
5 thirty days from the date of service of the District Judge's order to file a second amended  
6 complaint. (Id. at 5.) As a result, Plaintiff was allowed until December 6, 2016 to file a second  
7 amended complaint.

## 8 II.

### 9 DISCUSSION

10 Following the District Judge's November 3, 2016 order, Plaintiff filed the current motion,  
11 stating that he will not file any amended complaint, that he believes his first amended complaint  
12 is sufficient, and requesting that findings and recommendations be issued. (ECF No. 37.) Also,  
13 the deadline that the District Judge extended for Plaintiff to file a second amended complaint has  
14 now passed, and Plaintiff has not filed that pleading.

15 Accordingly, the undersigned construes Plaintiff's motion as a notification that he does  
16 not intend to file a second amended complaint as ordered by this Court and the District Judge,  
17 and further finds that his deadline to do so has now expired. For the reasons explained in the  
18 January 27, 2016 screening order, the Court finds that Plaintiff's first amended complaint fails to  
19 state a cognizable claim upon which relief can be granted. (ECF No. 14.) The Court therefore  
20 recommends that this action be dismissed, with prejudice, for the failure to state a cognizable  
21 claim for relief.

## 22 III.

### 23 ORDER AND RECOMMENDATION

24 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motion requesting the  
25 undersigned issue findings and recommendations, filed November 7, 2016 (ECF No. 37) is  
26 construed as a notification that Plaintiff declines to file any second amended complaint.

27 Furthermore, it is HEREBY RECOMMENDED that the instant action be dismissed for  
28 failure to state a cognizable claim for relief.

1           These Findings and Recommendation will be submitted to the United States District  
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty**  
3 **(30) days** after being served with this Findings and Recommendation, Plaintiff may file written  
4 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
5 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the  
6 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,  
7 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8  
9 IT IS SO ORDERED.

10 Dated: **December 13, 2016**

  
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UNITED STATES MAGISTRATE JUDGE