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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DAPHNYE S. LUSTER,

12 Plaintiff,

13 vs.

14 RAUL H. AMEZCUA, et al.,

15 Defendants.  
16  
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**1:16-cv-00554-LJO-GSA-PC**

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT CASE BE  
DISMISSED, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM UPON  
WHICH RELIEF MAY BE GRANTED  
(ECF No. 20.)**

**OBJECTIONS, IF ANY, DUE IN  
FOURTEEN (14) DAYS**

19 Daphnye S. Luster (“Plaintiff”) is a state prisoner proceeding pro se and in forma  
20 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
21 commencing this action on April 4, 2016, at the United States District Court for the Northern  
22 District of California. (ECF No. 1.) On April 18, 2016, the case was transferred to the Eastern  
23 District of California. (ECF No. 5.)

24 On February 27, 2017, the court dismissed Plaintiff’s Complaint for failure to state a  
25 claim, with leave to file an amended complaint. (ECF No. 14.) 28 U.S.C. § 1915A; 28 U.S.C.  
26 § 1915(e). On May 22, 2017, Plaintiff filed the First Amended Complaint. (ECF No. 20.) On  
27 March 26, 2018, the court dismissed the First Amended Complaint for failure to state a claim,  
28 with leave to amend within thirty days. (ECF No. 22.) The thirty-day time period for

1 amending the complaint has expired, and Plaintiff has not complied with or otherwise  
2 responded to the court's order. As a result, there is no pleading on file which sets forth any  
3 claims upon 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  
6 failure to state a claim upon which relief may be granted under section 1983, and that this  
7 dismissal be subject to the "three-strikes" provision set forth in 28 U.S.C. § 1915(g). Silva v.  
8 Vittorio, 658 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, 838-39 (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: May 22, 2018

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE