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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 CONFESSOR MONTALVO,

12 Plaintiff,

13 vs.

14 CDCR PERSONNEL,

15 Defendants.
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1:16-cv-01078-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM
(ECF No. 11.)**

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

17 Confessor Montalvo (“Plaintiff”) is a state prisoner proceeding pro se and in forma
18 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
19 commencing this action on July 26, 2016. (ECF No. 1.)

20 On March 27, 2017, the court screened the Complaint under 28 U.S.C. § 1915A and
21 issued an order severing and transferring some of Plaintiff’s claims for lack of venue, (ECF No.
22 9), and an order dismissing the Complaint for violation of Rule 8(a), with leave to amend, (ECF
23 No. 10.) On April 17, 2017, Plaintiff filed the First Amended Complaint. (ECF No. 11.)

24 On October 5, 2017, the court dismissed the First Amended Complaint for failure to
25 state a claim, with leave to file a Second Amended Complaint within thirty days. (ECF No.
26 11.) The thirty-day deadline has now expired and Plaintiff has not filed a Second Amended
27 Complaint, or otherwise responded to the court’s order. As a result, there is now no pleading
28 on file which sets forth any claims upon which relief may be granted.

1 Accordingly, **IT IS HEREBY RECOMMENDED** that:

- 2 1. Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this case be
3 DISMISSED, with prejudice, based on Plaintiff's failure to state a claim upon
4 which relief may be granted under § 1983; and
- 5 2. The Clerk be directed to close this case.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within**
8 **fourteen (14) days** from the date of service of these findings and recommendations, Plaintiff
9 may file written objections with the court. Such a document should be captioned "Objections
10 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
11 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
12 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
13 (9th Cir. 1991)).

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15 IT IS SO ORDERED.

16 Dated: November 29, 2017

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