

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 ERICK HUFF,

12 Plaintiff,

13 vs.

14 WARDEN SHERMAN, et al.,

15 Defendants.
16
17
18
19

1:16-cv-01117-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED. WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM
(ECF No. 15.)

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

20 Erick Huff (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with
21 this civil rights action pursuant to 42 U.S.C. § 1983. On August 2, 2016, Plaintiff filed the
22 Complaint commencing this action. (ECF No. 1.) On August 28, 2017, Plaintiff filed the First
23 Amended Complaint as a matter of course. Fed. R. Civ. P. 15(a). (ECF No. 15.)

24 On February 12, 2018, the court issued an order dismissing Plaintiff’s Complaint for
25 failure to state a claim, with leave to file an amended complaint within thirty days. (ECF No.
26 16.) The thirty-day deadline has now expired, and Plaintiff has not filed an amended complaint
27 or otherwise responded to the court’s order. As a result, there is no pleading on file which sets
28 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;
- 5 2. This dismissal be subject to the "three strikes" provision of 28 U.S.C. § 1915(g);
6 and
- 7 3. The Clerk be directed to close this case.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within**
10 **fourteen (14) days** from the date of service of these findings and recommendations, Plaintiff
11 may file written objections with the court. Such a document should be captioned "Objections
12 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
13 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
14 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
15 (9th Cir. 1991)).

16
17 IT IS SO ORDERED.

18 Dated: April 2, 2018

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE