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

<p>MARCUS KERNELL WINSTEAD,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="padding-left: 80px;">v.</p> <p>ANDRE MATEVOUSIAN, et al.,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.: 1:17-cv-00951-LJO-BAM (PC)</p> <p>ORDER DENYING PLAINTIFF’S OBJECTIONS TO FINDINGS AND RECOMMENDATIONS</p> <p>(ECF No. 18)</p>
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Plaintiff Marcus Kernell Winstead (“Plaintiff”) is a federal prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

On May 1, 2018, the assigned Magistrate Judge issued findings and recommendations that this action be dismissed for failure to state a cognizable claim for relief. (ECF No. 12.) Following two extensions of time to allow Plaintiff to file objections to those findings and recommendations, on June 26, 2018, the Court dismissed this action, with prejudice, for failure to state a cognizable claim for relief. (ECF Nos. 16, 17.)

Currently pending before the Court are Plaintiff’s objections to the Magistrate Judge’s findings and recommendations, filed June 29, 2018. (ECF No. 18.) Plaintiff states that he was unable to submit his objections earlier due to his recent transfer and lack of access to his legal property.

1 Plaintiff further states that he does not object to the dismissal of this action, but requests that the
2 dismissal be entered without prejudice. Plaintiff argues that he filed this action honestly believing that
3 Bivens was a viable avenue for relief, because the Ninth Circuit had previously accepted retaliation
4 claims under Bivens. Plaintiff also states that he does not wish to incur a strike against him for filing
5 this suit, and that he hopes to pursue this claim through the proper vehicle. (Id.)

6 Plaintiff's objections are unpersuasive. A dismissal without prejudice is appropriate where, as
7 here, the deficiencies in the complaint are not subject to cure by amendment. Although Plaintiff may
8 have honestly believed that he could proceed in this action under Bivens, this belief does not provide a
9 basis for a dismissal without prejudice and the corresponding ability to refile suit on the same claims
10 and for the same relief. The Court finds no basis for reconsidering the Magistrate Judge's findings and
11 recommendations, or the Court's order adopting them in full

12 Accordingly, IT IS HEREBY ORDERED that Plaintiff's objections to the Magistrate Judge's
13 findings and recommendations, (ECF No. 18), are DENIED. This action remains closed.

14
15 IT IS SO ORDERED.

16 Dated: July 9, 2018

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE