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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 SAMUEL ARCHULETA,

12 Plaintiff,

13 vs.

14 K. FOUNGLONG, et al.,

15 Defendants.  
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1:18-cv-00693-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS  
THAT THIS CASE BE DISMISSED, WITH  
PREJUDICE, FOR FAILURE TO STATE A  
CLAIM  
(ECF No. 12.)

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

17 Samuel Archuleta (“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. On May 21, 2018, Plaintiff  
19 filed the Complaint commencing this action. (ECF No. 18.) On December 6, 2018, the court  
20 issued an order dismissing the Complaint for failure to state a claim, with leave to amend. (ECF  
21 No. 10.) On December 17, 2018, Plaintiff filed the First Amended Complaint. (ECF No. 11.)

22 Plaintiff’s First Amended Complaint was not signed, and Plaintiff did not request any  
23 relief therein. On December 17, 2018, the court issued an order striking the First Amended  
24 Complaint and ordering Plaintiff to file a Second Amended Complaint that includes a request  
25 for relief and which bears Plaintiff’s original signature, within thirty days. (ECF No. 12.) The  
26 thirty-day time period has expired and Plaintiff has not filed a Second Amended Complaint or  
27 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; and

5 2. This dismissal be subject to the "three strikes" provision of 28 U.S.C. § 1915(g).

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: February 12, 2019

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