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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CLARENCE L. HEARNS, et al.,  
Plaintiffs,  
v.  
ANDREW WHISNAND, et al.,  
Defendants.

Case No. 1:20-cv-00313-JLT (PC)

**ORDER WITHDRAWING FINDINGS AND  
RECOMMENDATIONS (Doc. 19) ORDER  
DISMISSING THE ACTION**

(Doc. 18)

Clarence L. Hearn filed a first amended complaint alleging that the defendants interfered with his mail and access to the court in violation of the First Amendment. (Doc. 13.) The Court screened the amended complaint and determined that Plaintiff failed to state a claim on which relief may be granted. (Doc. 17.) The Court granted Plaintiff leave to file a second amended complaint and advised that that if he did not want to amend, he could instead file a notice of voluntary dismissal or forego amendment and notify the Court that he wishes to stand on his complaint. (*Id.* at 8.) The Court advised: “If the last option is chosen, the undersigned will issue findings and recommendations to dismiss the complaint without leave to amend, plaintiff will have an opportunity to object, and the matter will be decided by a District Judge.” (*Id.*)

Plaintiff filed a response electing to waive his option to amend his complaint a second time and to stand on his first amended complaint as screened. (Doc. 18.) Plaintiff added: “Please move forward with your scheduled issuing of your Report and Recommendation, to have this action

1 terminated.” *Id.*

2 Accordingly, and for the reasons set forth in the Court’s screening order (Doc. 17), the  
3 Court **ORDERS** the findings and recommendations to be **WITHDRAWN**<sup>1</sup> (Doc. 20) and the  
4 action is **DISMISSED** for failure to state a claim.

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6 IT IS SO ORDERED.

7 Dated: January 9, 2022

  
UNITED STATES DISTRICT JUDGE

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28 <sup>1</sup> The findings and recommendation are withdrawn due to the elevation of the undersigned to Article III status and the reassignment to the undersigned in that new role.