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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 TIMOTHY DUKES,

8 Plaintiff,

9 v.

10 WASHINGTON STATE and MR.
HOMAN

11 Defendants.

NO: 4:16-CV-5080-RMP

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING COMPLAINT
WITHOUT PREJUDICE

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13 BEFORE THE COURT is Magistrate Judge John Rodgers' Report and
14 Recommendation to dismiss the complaint without prejudice for failure to state a
15 claim upon which relief may be granted, ECF No. 9. Magistrate Judge Rodgers
16 specifically did not recommend that this dismissal count as one under 28 U.S.C. §
17 1915(g), as Plaintiff might be able to pursue an appropriate habeas remedy to
18 challenge state court criminal charges.

19 Plaintiff, a prisoner at the Washington State Penitentiary, is proceeding *pro*
20 *se* and *in forma pauperis*; Defendants have not been served in this action. There
21 being no objections, **IT IS ORDERED** that the Report and Recommendation, ECF

ORDER ADOPTING REPORT AND RECOMMENDATION AND
DISMISSING COMPLAINT WITHOUT PREJUDICE -- 1

1 No. 9, is **ADOPTED in its entirety. IT IS FURTHER ORDERED** that the
2 Complaint, ECF No. 7, is **DISMISSED without prejudice.**

3 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
4 Order, enter judgment, forward a copy to Plaintiff and close the file. The Court
5 certifies any appeal of this dismissal would not be taken in good faith.

6 **DATED** this 18th day of October 2016.

7 *s/ Rosanna Malouf Peterson*
8 ROSANNA MALOUF PETERSON
9 United States District Judge
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