UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JERRY LEWIS THOMAS,	CASE NO. 1:07-cv-00741-AWI-DLB (PC)
Plaintiff,	ORDER ADOPTING FINDINGS & RECOMMENDATIONS, AND DISMISSING ACTION FOR FAILURE TO STATE A CLAIM
v.	
WARDEN ANTHONY HEDGPETH,	(Doc. 16)
Defendant(s). /	THIS DISMISSAL SHALL COUNT AS A STRIKE PURSUANT TO 28 U.S.C. § 1915(g)

Plaintiff Jerry Lewis Thomas ("plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On December 16, 2008, the Magistrate Judge filed a Findings and Recommendations herein which was served on plaintiff and which contained notice to plaintiff that any objection to the Findings and Recommendations was to be filed within thirty days. On January 21, 2009, Plaintiff was granted an extension of time to file an Objection. Plaintiff did not file a timely Objection to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis. Even considering Plaintiff's late objections, Plaintiff's objections do not provide a basis to not adopt the Findings and Recommendations. The fact Defendants may have been acting under color of state law at the time

of Defendants' alleged improper conduct does not turn every tort they may have committed into a violation of Plaintiff's constitutional rights.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed December 16, 2008, is adopted in full;
2. This action is dismissed for failure to state a claim upon which relief may be granted.; and
3. This dismissal shall count as a strike pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

Dated: April 17, 2009 **/s/ Anthony W. Ishii**
CHIEF UNITED STATES DISTRICT JUDGE