1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 CHRISTOPHER I. SIMMONS, Case No.: 1:07-cv-01058-LJO-SAB (PC) 12 Plaintiff, ORDER ADOPTING FINDINGS AND RECOMMENDATION AND DENYING 13 v. DEFENDANT KEILEY'S MOTION TO DISMISS 14 GRISSOM, et al., [ECF Nos. 93, 104] 15 Defendants. 16 Plaintiff Christopher I. Simmons is appearing pro se and in forma pauperis in this civil rights 17 action pursuant to 42 U.S.C. § 1983. 18 19 On December 22, 2014, the Magistrate Judge filed a Findings and Recommendation which was 20 served on the parties and which contained notice to the parties that Objections to the Findings and 21 Recommendation was to be filed within thirty days. Plaintiff filed an Objection on January 26, 2015. 22 (ECF No. 109.) Defendant Keiley filed a response to Plaintiff's objections on February 9, 2015. (ECF No. 111.) 23 24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and 25 26 Recommendation to be supported by the record and by proper analysis. 27 28

In his objections, Plaintiff requests the imposition of sanctions based on his claim that Defendant Keiley's motion to dismiss was frivolous and filed to impose an improper burden on Plaintiff. Defendant Keiley opposes Plaintiff's request for imposition of sanctions.

Rule 11 sanctions is reserved "for the rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation …" Operating Engineers Pension Trust v. A-C Co., 859 F.2d 1336, 1344 (9th Cir. 1988). Here, although the Findings and Recommendations, adopted in full herein, has resulted in the denial of Defendant Keiley's motion to dismiss, this is not one of those rare instances in which it can be said the motion to dismiss was frivolous and/or legally unreasonable, and there is no basis to find that defense counsel was motivated by an intent to harass or cause harm to Plaintiff.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The Findings and Recommendation, filed on December 22, 2014, is adopted in full;
- 2. Defendant Keiley's motion to dismiss is DENIED; and
- 3. Plaintiff's request for imposition of sanctions is DENIED.

IT IS SO ORDERED.

Dated: February 9, 2015 /s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE