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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,

Plaintiff,

v.

J. MARTINEZ, et al.,

Defendants.

CASE NO. 1:07-CV-01511-AWI-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(DOC. 51)

FILING FEE DUE WITHIN FIFTEEN DAYS

_____ /

Plaintiff Bryan E. Ransom (“plaintiff”) is a California state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 30, 2010, Defendants filed a [motion](#) to revoke Plaintiff’s in forma pauperis status and dismiss this action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 7, 2011, the Magistrate Judge filed a [Findings and Recommendations](#) which was served on the parties and which contained notice to the parties that any objection to the Findings and Recommendations was to be filed within twenty-one days. Plaintiff filed an [Objection](#) to the Findings and Recommendations on February 14, 2011.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), 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.

Plaintiff repeats his arguments that dismissals pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994), should not be construed as dismissals for failure to state a claim pursuant to 28 U.S.C. § 1915(g). Plaintiff also contends that dismissals without prejudice should not qualify as strikes. The

1 Court disagrees. A dismissal pursuant to *Heck* is a dismissal because Plaintiff's claims are not
2 cognizable, which is a dismissal for failure to state a claim. Dismissals without prejudice may still
3 count as dismissals for failure to state a claim. *O'Neal v. Price*, 531 F.3d 1146, 1154 (9th Cir. 2008).

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The [Findings and Recommendations](#), filed February 7, 2011, is adopted in full;
- 6 2. Defendants' [motion](#) to revoke Plaintiff's in forma pauperis status is granted;
- 7 3. Defendants' motion to dismiss is denied;
- 8 4. Plaintiff is ordered to pay the \$350.00 filing fee in full within **fifteen (15) days** from
9 the date of service of this order; and
- 10 5. Failure to timely pay the filing fee will result in dismissal of this action without
11 prejudice.

12 IT IS SO ORDERED.

13 Dated: March 9, 2011

14 
CHIEF UNITED STATES DISTRICT JUDGE