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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEMMEL DIXON,

Plaintiff,

v.

F. GONZALES, et al.,

Defendants.

CASE NO. 1:09-cv-00172-LJO-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION WITH PREJUDICE FOR FAILURE
TO STATE A CLAIM

(DOC. 36)

_____ /

Plaintiff Gemmel Dixon (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On September 7, 2011, Plaintiff filed a [Fourth Amended Complaint](#). Doc. 35. 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 November 14, 2011, the Magistrate Judge filed a [Findings and Recommendations](#) which was served on Plaintiff and which contained notice to Plaintiff that any objection to the Findings and Recommendations was to be filed within twenty-one days. Plaintiff did not file an objection, but instead filed a proposed [Fifth Amended Complaint](#). Doc. 39.

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. The Court does not grant Plaintiff leave to file a Fifth Amended Complaint. Plaintiff’s Fifth Amended Complaint presents the same allegations raised in the Fourth Amended Complaint, which fails to state a claim.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendations, filed November 14, 2011, is adopted in full;
- 3 2. This action is dismissed with prejudice for failure to state a claim upon which relief
4 may be granted under 42 U.S.C. § 1983; and
- 5 3. This dismissal is subject to the “three strikes” provision of 28 U.S.C. § 1915(g).
6 *Silva v. Di Vittorio*, 658 F.3d 1090, 1098-99 (9th Cir. 2011).

7 IT IS SO ORDERED.

8 **Dated:** March 14, 2012

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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