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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

VERNON D. CARROLL,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:09-cv-01701-OWW-SKO PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
ACTION WITH PREJUDICE FOR FAILURE
TO STATE A CLAIM UNDER SECTION 1983,
AND DIRECTING CLERK OF COURT TO
ENTER JUDGMENT

(Docs. 18, 20, and 23)

ORDER COUNTING DISMISSAL AS A
STRIKE UNDER 28 U.S.C. § 1915(G)

Plaintiff Vernon D. Carroll, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 28, 2009. 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 25, 2011, a Findings and Recommendations was filed in which the Magistrate Judge screened Plaintiff’s amended complaint and recommended dismissal of this action for failure to state a claim under section 1983. 28 U.S.C. § 1915A. After receiving an extension of time, Plaintiff filed a timely Objection on April 11, 2011.¹

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

¹ Plaintiff also seeks an order directing the United States Marshal to initiate service of process. That request is moot in light of this order and is denied.

1 Recommendations to be supported by the record and by proper analysis. Plaintiff has not stated any
2 claims for violation of the Eighth Amendment and this action shall be dismissed. In his objections,
3 Plaintiff references contributory and comparative negligence. (Doc. 28, p. 2.) The Court expresses
4 no opinion whether Plaintiff may be able to state any claims under California tort law, as absent a
5 viable federal claim, the Court will not exercise supplemental jurisdiction over state law claims. 28
6 U.S.C. § 1367(a); Herman Family Revocable Trust v. Teddy Bear, 254 F.3d 802, 805 (9th Cir.
7 2001).

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The Court adopts the Findings and Recommendations filed on February 25, 2011, in
10 full;
- 11 2. This action is dismissed, with prejudice, for failure to state a claim under section
12 1983;
- 13 3. The Clerk of the Court shall enter judgment against Plaintiff; and
- 14 4. This dismissal counts as a strike under 28 U.S.C. § 1915(g).

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16 IT IS SO ORDERED.

17 **Dated:** April 14, 2011

18 /s/ Oliver W. Wanger
19 UNITED STATES DISTRICT JUDGE
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