

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NOEL RODRIGUEZ,

Plaintiff,

v.

ISAAC, et al.,

Defendants.

CASE NO. 1:09-CV-01784-AWI-MJS (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS FOR DISMISSAL
OF PLAINTIFF'S ACTION WITH
PREJUDICE FOR FAILURE TO STATE A
CLAIM AND DIRECTING CLERK OF
COURT TO ENTER JUDGMENT
COUNTING DISMISSAL AS A STRIKE
UNDER 28 U.S.C. § 1915(g)

(ECF NO. 31)

Plaintiff Noel Rodriguez, a state prisoner proceeding pro se and in forma pauperis filed this civil rights action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On May 23, 2012, Findings and Recommendations for Dismissal (Findings and Recommendations, ECF No. 31) were filed in which the Magistrate Judge recommended

1 dismissal of the action with prejudice for failure to state a claim. Plaintiff was notified that
2 his objection, if any, was due within thirty (30) days. Plaintiff timely objected to the Findings
3 and Recommendations. (Objections, ECF No. 32.)
4

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has
6 conducted a de novo review of this case. Having carefully reviewed the entire file
7 including Plaintiff's Objections, the Court finds the Findings and Recommendations to be
8 supported by the record and by proper analysis. As explained by the Magistrate Judge:
9 "The treatment a prisoner receives in prison and the conditions under which he is
10 confined are subject to scrutiny under the Eighth Amendment." Farmer v. Brennan, 511
11 U.S. 825, 832 (1994). While Plaintiff argues in the objections a lower standard should
12 be sufficient to state a claim, the Supreme Court is clear that to violate the Eighth
13 Amendment the prisoner must establish that prison officials were "deliberately indifferent
14 to a serious threat to the inmates's safety." Farmer, 511 U.S. at 834.
15

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The Court adopts the Findings and Recommendations filed May 23, 2012,
18 in full,
- 19 2. This action is dismissed with prejudice for failure to state a claim,
- 20 3. The Clerk of the Court shall enter judgment against Plaintiff, and
21 4. This dismissal counts as a strike under 28 U.S.C. § 1915(g).
- 22

23 IT IS SO ORDERED.

24 Dated: August 3, 2012

25 
26 CHIEF UNITED STATES DISTRICT JUDGE
27