

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARCUS RUBEN ELLINGTON,

Plaintiff,

v.

CLARK, et al.,

Defendants.

CASE NO. 1:09-CV-02141-AWI-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS(ECF NO. [31](#))

Plaintiff Marcus Ruben Ellington ("Plaintiff") is a California state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act, and the Rehabilitation Act. 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 June 7, 2010, the Magistrate Judge filed a [Findings and Recommendations](#) that recommended dismissal of certain claims and defendants. The Findings and Recommendations were served on Plaintiff and contained notice to Plaintiff that any objection to the Findings and Recommendations was to be filed within twenty days. Plaintiff filed an [Objection](#) to the Findings and Recommendations on June 17, 2010.

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's contention that individual defendants are liable under the ADA is without merit. Plaintiff's contention that Defendants violated the Fourth Amendment, due process, and equal

1 protection is unsupported by the pleadings. Plaintiff's contention that all other defendants had "first
2 hand knowledge" of the alleged violations is unsupported by the pleadings. The exhibits
3 demonstrate only that Plaintiff grieved these issues. That alone does not demonstrate that the other
4 defendants violated Plaintiff's constitutional rights.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The [Findings and Recommendations](#), filed June 7, 2010, is adopted in full;
- 7 2. Defendants Patel, Castro, Guiang, N. Grannis, C. Hammond, S. Lopez, Ariarch,
8 Schwarzenegger, K. Harrington, the Director of CDCR, and C. Kelso are
9 DISMISSED from this action with prejudice for failure to state a claim;
- 10 3. This action SHALL proceed on Plaintiff's first amended [complaint](#), filed April 30,
11 2010, against Defendant Akanno for violation of the Eighth Amendment and
12 Defendant Kern Valley State Prison for violation of Title II of the Americans with
13 Disabilities Act and § 504 of the Rehabilitation Act; and
- 14 4. This action is referred to the Magistrate Judge for further proceedings.

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16 IT IS SO ORDERED.

17 Dated: August 3, 2010

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19 CHIEF UNITED STATES DISTRICT JUDGE
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