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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVIE SMITH,

Plaintiff,

v.

ROBERT L. AYRIS, JR., et al.,

Defendants.

CASE NO. 1:10-CV-00428-AWI-DLB PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATION AND DISMISSING
ACTION WITHOUT PREJUDICE

(DOC. [13](#))

DISMISSAL COUNTS AS STRIKE
PURSUANT TO 28 U.S.C. § 1915(G)

Plaintiff Stevie Smith (“plaintiff”) is a California state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by filing his complaint in on January 19, 2010. 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 October 12, 2010, the Magistrate Judge filed a [Findings and Recommendations](#) herein 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 a timely Objection to the Findings and Recommendations.

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.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The [Findings and Recommendations](#), filed October 12, 2010, is adopted in full;
- 3 2. This action is dismissed without prejudice for violation of the favorable termination
- 4 rule of *Heck v. Humphrey*, 512 U.S. 477 (1994); and
- 5 3. This dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).
- 6

7 IT IS SO ORDERED.

8 Dated: November 13, 2010


9 CHIEF UNITED STATES DISTRICT JUDGE