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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK GRANGETTO,

1:10-cv-0701-AWI-SKO-PC

Plaintiff,

ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS  
(Doc. 25.)

vs.

KYUNGTAK MINN, et al.,

ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS AND DISMISSING  
COMPLAINT WITH LEAVE TO AMEND

Defendants.

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Mark Grangetto (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. 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 11, 2010, the Magistrate Judge issued Findings and Recommendations that Plaintiff’s first amended complaint be dismissed with leave to amend. The Findings and Recommendations contained notice that any objections were to be filed within thirty (30) days after service of the order. On December 10, 2010, Plaintiff filed objections to the Magistrate Judge’s Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, including Plaintiff’s objections, the Court finds the Findings and Recommendations to be supported

1 by the record and proper analysis. In the objections, Plaintiff contends that the Magistrate Judge did  
2 not follow the liberal pleading standards found in Rule 8 of the Federal Rules of Civil Procedure. In  
3 reviewing a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, all of the  
4 complaint's material allegations of fact are taken as true, and the facts are construed in the light most  
5 favorable to the non-moving party. Marceau v. Balckfeet Hous. Auth., 540 F.3d 916, 919 (9<sup>th</sup> Cir.  
6 2008); Vignolo v. Miller, 120 F.3d 1075, 1077 (9<sup>th</sup> Cir. 1999). The court must also assume that  
7 general allegations embrace the necessary, specific facts to support the claim. Smith v. Pacific Prop.  
8 and Dev. Corp., 358 F.3d 1097, 1106 (9<sup>th</sup> Cir. 2004). However, the court is not required "to accept  
9 as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
10 inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1056-57 (9<sup>th</sup> Cir. 2008); Sprewell v.  
11 Golden State Warriors, 266 F.3d 979, 988 (9<sup>th</sup> Cir. 2001). Although they may provide the framework  
12 of a complaint, legal conclusions are not accepted as true and "[t]hreadbare recitals of elements of a  
13 cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129  
14 S.Ct. 1937, 1949-50 (2009); see also Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139  
15 (9<sup>th</sup> Cir. 2003). As the Supreme Court explained:

16 While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need  
17 detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his  
18 'entitlement to relief' requires more than labels and conclusions, and a formulaic  
19 recitation of the elements of a cause of action will not do. Factual allegations must be  
enough to raise a right to relief above the speculative level, on the assumption that all  
the allegations in the complaint are true (even if doubtful in fact).

20 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). "In sum, for a complaint to survive a  
21 motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content,  
22 must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. United States Secret  
23 Service, 572 F.3d 962, 969 (9<sup>th</sup> Cir. 2009). As explained by the Magistrate Judge, the first amended  
24 complaint does not meet this standard. Nothing in the objections convinces the court the Magistrate  
25 Judge's determination was incorrect.

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Accordingly, THE COURT HEREBY ORDERS that:

1. The Findings and Recommendations issued by the Magistrate Judge on November 12, 2010, are adopted in full;
2. Defendants' motion to dismiss is GRANTED; and
3. Plaintiff's first amended complaint is DISMISSED with leave to file an amended complaint within thirty (30) days.

IT IS SO ORDERED.

Dated: February 3, 2011

  
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CHIEF UNITED STATES DISTRICT JUDGE