

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
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHARLES STEWART,

Plaintiff,

v.

J. TILTON, et al.,

Defendants.

CASE NO. 1:10-cv-00985-AWI-SKO PC

ORDER (1) ADOPTING FINDINGS AND RECOMMENDATIONS, (2) DENYING MOTION FOR APPOINTMENT OF COUNSEL, (3) DISMISSING ACTION WITH PREJUDICE FOR FAILURE TO STATE A CLAIM UNDER SECTION 1983 AGAINST DEFENDANTS TILTON, SULLIVAN, AND ALLISION, AND (4) DIRECTING CLERK OF COURT TO ENTER JUDGMENT

(Docs. 17, 18, 19, and 20)

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

Plaintiff Charles Stewart, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 3, 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 17, 2011, a Findings and Recommendations was filed in which the Magistrate Judge screened Plaintiff's amended complaints and recommended dismissal of the action for failure to state a claim.¹ 28 U.S.C. § 1915A. The thirty-day objection period has expired and Plaintiff did not file an objection.

///

¹ Plaintiff filed three documents on August 3, 2011, August 15, 2011, and August 22, 2011. In light of Plaintiff's pro se status and the contents of the filings, the Magistrate Judge found that it was in the interest of justice to make an exception and view the filings of August 3 and August 22 together as the amended complaint, with the filing of August 15 treated as a motion seeking the appointment of counsel.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de*
2 *novo* review of this case. Having carefully reviewed the entire file, the Court finds the Findings and
3 Recommendations to be supported by the record and by proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The Court adopts the Findings and Recommendations filed on October 17, 2011, in
6 full;
- 7 2. Plaintiff's motion for the appointment of counsel is denied;
- 8 3. This action is dismissed, with prejudice, for failure to state a claim under section
9 1983 against Defendants Tilton, Sullivan, and Allison;
- 10 4. The Clerk of the Court shall enter judgment against Plaintiff; and
- 11 5. This dismissal counts as a strike under 28 U.S.C. § 1915(g).

12 IT IS SO ORDERED.

13 Dated: December 23, 2011



CHIEF UNITED STATES DISTRICT JUDGE