UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JON CHRIST,) 1:11cv00705 AWI DLB PC
Plaintiff, vs.	ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DISMISSING ACTION AND DENYING DEFENDANT'S MOTION TO DISMISS AS MOOT
JAMES HARTLEY, et al.,	(Document 22)
Defendants.)

Plaintiff Jon Christ ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The action was removed from the Santa County Superior Court on April 11, 2011, and transferred to this Court on April 29, 2011.

On January 9, 2013, the Magistrate Judge issued <u>Findings and Recommendations</u> to dismiss the action for failure to state a claim and deny Defendant's Motion to Dismiss as moot. The Findings and Recommendations were served on the parties and contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty days. Plaintiff filed <u>objections</u> on January 25, 2013.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a <u>de novo</u> review of this case. Having carefully reviewed the entire file, including Plaintiff's

objections, the Court finds that the Findings and Recommendations are supported by the record and by proper analysis.

In Plaintiff's objections, he argues, for the first time, that Defendant violated his equal protection rights by depriving him of access to electrical appliances that other inmates are permitted to have. However, a new theory cannot properly be raised in objections to Findings and Recommendations. Greenhow v. Secretary of HHS, 863 F.2d 633, 638-39 (9th Cir. 1988), overruled on other grounds by United States v. Hardesty, 977 F.2d 1347 (9th Cir.1992).

Moreover, as explained in the Findings and Recommendations, Plaintiff requests only injunctive relief. Such relief remains moot because Plaintiff has been transferred to a different prison. ¹

The Court notes that Plaintiff states, also for the first time, that his property has now been destroyed. He explains that he received a first level response on January 15, 2013, indicating that his property has now been destroyed. He also indicates that his appeal as to the destruction of property is only at the second level of review. The destruction of property issue may ultimately lead to cognizable claims, though not in the action currently before the Court.

In conclusion, Plaintiff's objections do not change the nature of the action before the Court. The Findings and Recommendations remain supported by the record and proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The Findings and Recommendations, filed January 9, 2013, are ADOPTED in full;
- 2. This action is DISMISSED for failure to state a claim for which relief can be granted;

¹ Plaintiff filed an untimely opposition to Defendant's Motion to Dismiss in which he also references an equal protection violation. However, Plaintiff's request for injunctive relief remains moot.

1	3. This dismissal is subject to the "three-strikes" provision set forth in 28 U.S.C. §
2	1915(g); and
3	4. Defendant's Motion to Dismiss is DENIED AS MOOT (Document 19).
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6	IT IS SO ORDERED.
7	Dated: February 20, 2013
8	SENIOR DISTRICT JUDGE
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