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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOHN E. WEST,

Plaintiff,

v.

A. LOPEZ, et al.,

Defendants.

CASE NO. 1:11-cv-00851-LJO-GBC (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
ACTION WITH PREJUDICE FOR FAILURE  
TO STATE A CLAIM UNDER SECTION 1983,  
AND DIRECTING CLERK OF COURT TO  
ENTER JUDGMENT

/ Doc. 14

On May 10, 2011, Plaintiff John E. West, a state prisoner proceeding pro se and in forma pauperis, filed 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 October 6, 2011, the Magistrate Judge screened Plaintiff’s complaint and issued an [Order Dismissing Complaint, with Leave to Amend](#), for failure to state a claim. 28 U.S.C. § 1915A. On December 14, 2011, the Magistrate Judge issued [Findings and Recommendations](#), recommending dismissal of this action for failure to state a claim. Plaintiff has not responded or objected to any of the Court’s orders.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the 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 complaint is insufficient to support a claim that Defendants failed to protect him from his cellmate, in violation of the Eighth Amendment. *See Ashcroft v. Iqbal*, 556 U.S. 662, \_\_\_, 129 S. Ct. 1937, 1949-50 (2009)

1 (the mere possibility of misconduct is insufficient to support a plausible claim for relief); *Farmer*  
2 *v. Brennan*, 511 U.S. 825, 834 (1994) (prison officials violate the Eighth Amendment only when  
3 they knowingly disregard a substantial risk of harm to inmate health or safety); *Toguchi v. Chung*,  
4 391 F.3d 1051, 1060 (9th Cir. 2004) (“Deliberate indifference is a high legal standard.”).

5         Accordingly, the Court HEREBY ADOPTS the Findings and Recommendations, filed on  
6 December 14, 2011, in full; this action is DISMISSED, with prejudice, based on Plaintiff’s failure  
7 to state a claim upon which relief may be granted under 42 U.S.C. § 1983; and the Clerk of the Court  
8 shall enter judgment against Plaintiff. This dismissal is subject to the “three-strikes” provision set  
9 forth in 28 U.S.C. § 1915(g). *Silva v. Di Vittorio*, 658 F.3d 1090 (9th Cir. 2011).

10  
11 IT IS SO ORDERED.

12 **Dated:** January 25, 2012

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE