

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**

STEVE WILHELM,	)	Case No.: 1:12-cv-00386-AWI-SAB (PC)
	)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATION, DISMISSING ACTION
v.	)	WITHOUT LEAVE TO AMEND FOR FAILURE
	)	TO STATE A COGNIZABLE CLAIM, AND
JEANNIE WOODFORD, et al.,	)	ENTERING JUDGMENT
	)	
Defendants.	)	[ECF No. 30]
	)	
	)	

Plaintiff Steve Wilhelm is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On January 15, 2014, the Magistrate Judge issued Findings and Recommendation that the Second Amended Complaint DISMISSED, without leave to amend for failure to state a cognizable claim. This Findings and Recommendation was served on Plaintiff and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order. Instead of filing objections, Plaintiff filed an appeal with the Ninth Circuit within that thirty day time frame. The Ninth Circuit denied the appeal for lack of subject matter jurisdiction as the order challenged was not final or appealable. Shortly thereafter, Plaintiff filed late objections. Given this procedural history, Plaintiff’s objections will be considered.

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

1 Recommendations to be supported by the record and by proper analysis. Plaintiff is suing the Director  
2 of the California Department of Corrections and Rehabilitation for causing Plaintiff to endure  
3 prolonged exposure to second hand smoke which resulted in serious health problems. However, the  
4 only factual allegation of personal involvement is that the Director was responsible for approving all  
5 rules and regulations, including permitting smoking and providing insufficient ventilation. Doc. 28. In  
6 reviewing Plaintiff's First Amended Complaint, the Magistrate Judge had warned Plaintiff that this  
7 bare allegation was not sufficient to state a claim. Doc. 16. Plaintiff was given an opportunity to  
8 amend and cure this factual deficiency. Doc. 27. Plaintiff has not done so; further amendment would  
9 be futile.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The Findings and Recommendations, filed on January 15, 2014, are adopted in full;
- 12 2. This action is dismissed with prejudice for failure to state a cognizable claim;
- 13 3. This dismissal is subject to the "three-strikes" provision set forth in 28 U.S.C. §  
14 1915(g). Silva v. Di Vittorio, 658 F.3d 1090, 1098-99 (9th Cir. 2011);
- 15 4. The Clerk of Court shall enter judgment against Plaintiff and close this case.

16  
17 IT IS SO ORDERED.

18 Dated: January 14, 2015

  
19 SENIOR DISTRICT JUDGE