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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FRANKIE WASHINGTON,

Plaintiff,

vs.

D. OGLETREE, et al.,

Defendants.

1:12-cv-01473-AWI-GSA-PC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(Doc. 22.)

ORDER DISMISSING ACTION, WITH  
PREJUDICE, FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF MAY  
BE GRANTED UNDER SECTION 1983

ORDER THAT DISMISSAL IS SUBJECT  
TO 28 U.S.C. § 1915(G)

ORDER FOR CLERK TO CLOSE CASE

Frankie Washington (“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 May 8, 2014, [findings and recommendations](#) were entered, recommending that this action be dismissed based on plaintiff’s failure to state a claim upon which relief may be granted under §1983. (Doc. 22.) On June 24, 2014, Plaintiff filed [objections](#) to the findings and recommendations. (Doc. 23.)

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this  
2 court has conducted a de novo review of this case. Having carefully reviewed the entire file,  
3 including plaintiff's objections, the court finds the findings and recommendations to be  
4 supported by the record and proper analysis. The Court agrees with the Magistrate Judge that  
5 housing Plaintiff in a cell with inmates of a "different caliber" is insufficient without additional  
6 evidence of Defendant's alleged deliberate indifference.

7 Accordingly, THE COURT HEREBY ORDERS that:

- 8 1. The Findings and Recommendations issued by the Magistrate Judge on May 8,  
9 2014, are adopted in full;
- 10 2. This action is dismissed, with prejudice, based on plaintiff's failure to state a  
11 claim upon which relief may be granted under § 1983;
- 12 3. This dismissal is subject to the "three-strikes" provision set forth in 28 U.S.C. §  
13 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and
- 14 4. The Clerk of Court is directed to close this case.

15 IT IS SO ORDERED.

16 Dated: July 22, 2014

17   
18 SENIOR DISTRICT JUDGE