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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERTO G. CASTANEDA,

Plaintiff,

v.

CRYER,

Defendant(s).

Case No. 1:14-cv-00658-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS DISMISSING
ACTION WITH PREJUDICE FOR
FAILURE TO STATE A CLAIM**

(ECF No. 9)

**DISMISSAL COUNTS AS STRIKE
PURSUANT TO 28 U.S.C. § 1915(g)**

**CLERK TO TERMINATE ALL PENDING
MOTIONS AND CLOSE CASE**

Plaintiff is proceeding pro se and in forma pauperis in this civil rights action filed 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 of the United States District Court for the Eastern District of California.

On June 27, 2014, the Magistrate Judge issued Findings and Recommendation that the action be dismissed with prejudice for failure to state a claim. (F&R's, ECF No. 9 at ¶ V.) Plaintiff filed Objections to the Findings and Recommendation. (Obj. to F&R's, ECF No. 10.)

Plaintiff's Objections state his willingness to pay the filing fee and seek appointment

1 of counsel. However, Plaintiff has been granted in forma pauperis status. His willingness to
2 pay the filing fee does not raise an issue under the Findings and Recommendation.
3 Likewise his request for counsel. Even if the request for counsel were properly before the
4 Court, Plaintiff does not have a constitutional right to appointed counsel, *Rand v. Rowland*,
5 113 F.3d 1520, 1525 (9th Cir. 1997), partially overruled on other grounds, 154 F.3d 952,
6 954 n.1 (9th Cir. 1998), and the Court cannot require an attorney to represent Plaintiff
7 pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. United States District Court for the Southern*
8 *District of Iowa*, 490 U.S. 296, 298 (1989). Plaintiff does not allege facts demonstrating
9 exceptional circumstances sufficient to support appointment of counsel. *Rand*, 113 F.3d at
10 1525.

11 Plaintiff's Objections do not raise an issue of law or fact under the Findings and
12 Recommendation.

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

17 Accordingly, it is HEREBY ORDERED that:

- 18 1. The Court adopts the Findings and Recommendation filed on June 27, 2014
19 (ECF No. 9), in full,
- 20 2. The action is DISMISSED with prejudice for failure to state a claim and
21 dismissal shall count as a strike pursuant to the "three strikes" provision set
22 forth in 28 U.S.C. § 1915(g), and
- 23 3. The Clerk of the Court shall terminate all pending motions and close the case.

24 IT IS SO ORDERED.

25
26 Dated: July 18, 2014

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