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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDRE LAFON MOULTRIE,
Plaintiff,
v.
HAYNES, et al.,
Defendants.

Case No. 1:18-cv-01555-LJO-SKO (PC)

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

(Doc. 14)

Plaintiff Andre Lafon Moultrie is an inmate in county jail proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. section 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. section 636(b)(1)(B) and Local Rule 302.

On November 19, 2019, the assigned magistrate judge issued findings and recommendations to dismiss this action because Plaintiff fails to state a claim on which relief can be granted. (Doc. 14.) Plaintiff filed objections on December 2, 2019. (Doc. 15.) In his objections, Plaintiff states that he misunderstood the requirements for his complaint, and he requests further opportunity to amend. (*Id.*) Plaintiff does not address the substance of the findings, which provide that Plaintiff's factual allegations regarding an assault by other inmates do not show that jail guards were deliberately indifferent to Plaintiff's safety, or that the guards retaliated against Plaintiff for any engagement in protected activity. (*See* Doc. 14 at 4-6.) The magistrate judge stated that Plaintiff's claims may show that Defendants were negligent under state law, (*see id.* at

1 5.); however, mere negligence is not actionable here. *See Farmer v. Brennan*, 511 U.S. 825, 835
2 (1994).

3 The Court appreciates Plaintiff's assertion that he misunderstood the legal pleading
4 requirements, particularly given his *pro se* status. However, Plaintiff alleges similar facts in four
5 separate complaints. (*See* Docs. 1, 6, 11, 13). Plaintiff fails to state a claim not because he omits
6 proper legal terminology, but because the facts he alleges do not rise to the level of constitutional
7 violations or violations of other federal law. Because Plaintiff has received two prior
8 opportunities to amend, the Court finds that further opportunity would be futile.

9 In accordance with the provisions of 28 U.S.C. section 636(b)(1)(C), this Court has
10 conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds
11 the findings and recommendations to be supported by the record and proper analysis.

12 Accordingly, the Court ORDERS:

- 13 1. The findings and recommendations issued on November 19, 2019, (Doc. 14) are
14 ADOPTED in full;
- 15 2. This action is DISMISSED; and,
- 16 3. The Clerk of the Court is DIRECTED to close this case.

17
18 IT IS SO ORDERED.

19 Dated: December 6, 2019

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