

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Eric A. Thomas,)	Civil No. 2:08-00544 DAE-LEK
)	
Petitioner,)	
)	
vs.)	
)	
M.C. Kramer, et al.,)	
)	
Respondents.)	
_____)	

FINDINGS AND RECOMMENDATION TO DISMISS CASE WITH PREJUDICE

On February 9, 2010, this Court issued its Order Dismissing Second Amended Complaint Pursuant to 28 U.S.C. § 1915A ("Order"). In the Order, this Court found that Plaintiff Eric A. Thomas' ("Plaintiff") Second Amended Complaint Under 42 U.S.C. § 1983, filed on May 27, 2009, failed to state a claim upon which relief can be granted. The Court directed Plaintiff to file a third amended complaint by March 31, 2010 and cautioned him that, if he failed to do so, this Court would recommend that the action be dismissed without leave to amend, *i.e.* with prejudice. Further, the Order stated that such a dismissal would count as a "strike" under 28 U.S.C. § 1915(g).

Plaintiff has failed to submit a third amended complaint within the allotted time frame. Plaintiff was duly noticed that failure to comply would result in a dismissal of his action. This Court therefore FINDS AND RECOMMENDS that this case should be DISMISSED WITH PREJUDICE. Such dismissal will count as

a "strike" under 28 U.S.C. § 1915(g).

These findings and recommendation are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any party may file written objections with the court by **May 6, 2010**. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed by **May 20, 2010**. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, April 7, 2010.

/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

ERIC A. THOMAS V. M.C. KRAMER, ET AL.; CIVIL 2:08-00544 DAE-LEK;
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