

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

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

AARON JAMES PIERCE,

Plaintiff,

No. 2:11-cv-3392 MCE DAD P

vs.

G. TURNER, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 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 April 19, 2013, the Magistrate Judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Defendants have filed objections to the findings and recommendations (ECF No. 54), and Plaintiff has filed a response to defendants’ objections (ECF No. 56). Specifically, Defendants object to the Magistrate Judge’s Finding and Recommendations with respect to its proposal that the Plaintiff’s third case, Pierce v. Woodford, et. al., No. C 09-03343 JF (PR), does not constitute a strike for the purposes of revoking Plaintiff’s in froma pauperis (“IFP”) status. The Court

1 reviewed the documents Defendant submitted regarding Pierce in its Request for Judicial Notice
2 (ECF No. 37, Ex. 2), and the Court agrees with the Magistrate Judge that Pierce was dismissed
3 for failure to file an amended complaint, not on the grounds that it was “frivolous or malicious or
4 failed to state a claim upon which relief may be granted.” Thus, the dismissal does not operate
5 as a strike under 28 U.S.C. § 1915(g) and the Magistrate Judge properly denied Defendant’s
6 Motion to revoke Plaintiff’s IFP status.


7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
8 304, this court has conducted a de novo review of this case. Having carefully reviewed the
9 entire file, the court finds the findings and recommendations to be supported by the record and
10 by proper analysis.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The findings and recommendations filed April 19, 2013, are adopted in full
13 (ECF No. 51);
- 14 2. Defendants’ January 3, 2013 motion to revoke plaintiff’s in forma pauperis
15 status is denied (ECF No. 36); and
- 16 3. Defendants shall answer plaintiff’s complaint within ten days from the date of
17 this order.

18 IT I S SO ORDERED.

19 Date: June 10, 2013

20
21 
22 _____
23 MORRISON C. ENGLAND, JR., CHIEF JUDGE
24 UNITED STATES DISTRICT COURT
25
26