

granted, and Mr. Sullivan was given an opportunity to file an amended complaint and to show cause why his motion to proceed in forma pauperis should not be denied under the three-strike provision of 28 U.S.C. § 1915(g).


January 14, 2011 Judge Strong entered Findings and Recommendations and recommended Mr. Sullivan's Motion to proceed in forma pauperis should be denied pursuant to 28 U.S.C. § 1915(g), and the Complaint be dismissed with prejudice for failure to state a claim. Mr. Sullivan did not timely object to the Findings and Recommendations, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

After a review of Judge Strong's Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Strong's Findings and Recommendation (dkt # 8) are adopted in full. Mr. Sullivan's Motion to proceed in forma pauperis (dkt # 1) is DENIED, and his Complaint is dismissed with prejudice for failure to state a claim.

IT IS FURTHER ORDERED that the Clerk of Court shall have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. The record makes plain that the instant Complaint is frivolous as it lacks arguable substance in law or fact.

Dated this 9th day of February, 2011.



Donald W. Molloy, District Judge
United States District Court

