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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LAURA YBARRA,

Plaintiff,

v.

C/O ANDERSON, et al.,

Defendants.

1:09-cv-01098 OWW YNP SMS (PC)

FINDINGS AND RECOMMENDATIONS
THAT CERTAIN DEFENDANTS BE
DISMISSED

_____/

Plaintiff is a Madera County Jail inmate prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding against defendants employed by the California Department of Corrections and Rehabilitatino (CDCR) at Valley State Prison for Women (VSPW). Plaintiff filed this action on June 22, 2009. On February 23, 2010, the court issued an order finding that Plaintiff’s complaint states a cognizable claims against Defendant Anderson for excessive force in violation of the Eighth Amendment, but does not state any claims against Defendants Vantloff, Velasco, Rasmussen and Gerber. The Court ordered Plaintiff to either file an amended complaint or notify the Court of her willingness to proceed only on the claims found to be cognizable. On February 23,2010, Plaintiff notified the Court that she does not wish to amend and is willing to proceed on the claims found cognizable. Based on Plaintiff’s notice, this Findings and Recommendations now issues. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9th Cir. 1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing for failure to state a claim).

1 Accordingly, it is HEREBY RECOMMENDED that:

2 1. This action proceed on Plaintiff's complaint, filed June 22, 2009, against Defendant
3 Anderson for violation of the Eighth Amendment;

4 2. Defendants Vantloff, Velasco, Rasmussen and Gerber be dismissed based on
5 Plaintiff's failure to state any claims against her.

6 These Findings and Recommendations will be submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
8 **days** after being served with these Findings and Recommendations, plaintiff may file written
9 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
10 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
11 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
12 1153 (9th Cir. 1991).

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16 IT IS SO ORDERED.

17 **Dated: March 8, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE