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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GEORGE HAMILTON,

CASE NO. 1:04-cv-05129-OWW-MJS- PC

Plaintiff,

FINDINGS AND RECOMMENDATIONS

v.

T. MOORE, et al.,

Defendants.

_____/

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On April 7, 2009, the Court issued an order finding that Plaintiff’s first amended complaint states cognizable claims against Defendants Lopez and Aguirre, but does not state not state any claims against Defendants Moore, Alameida, Tristan, Scribner, Yamamoto, Stockman, Walker, Bustos, Yale, Granillo, Kaszap, Grisson, Malloy, Polston, Rankin or Caldwell. The Court ordered Plaintiff to either file an amended complaint or notify the Court of his willingness to proceed only on the claims found to be cognizable. On March 15, 2010, Plaintiff notified the Court that he 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).

Accordingly, it is **HEREBY RECOMMENDED** that Defendants Thomas Moore, E. Alameida, David Tristan, A. K. Scribner, Deputy Warden Yamamoto, D. Stockman, A.

1 Walker, J. Bustos, J. Yale, J. Granillo, L. Kaszap, R. Grisson, K. Malloy, C/O Polston, C/O
2 Rankin and T. Caldwell be dismissed based on Plaintiff's failure to state any claims against
3 them.

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

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14 IT IS SO ORDERED.

15 **Dated:** May 4, 2010

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE