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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CLARENCE HOWARD,  
Plaintiff,  
v.

CASE NO. 1:05-cv-00906-AWI-SKO PC  
FINDINGS AND RECOMMENDATIONS  
OBJECTIONS DUE WITHIN 30 DAYS

GRADTILLO, et al.,  
Defendants.  
\_\_\_\_\_ /

Plaintiff Clarence Howard (“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 March 11, 2010, the Court issued an order finding that Plaintiff’s first amended complaint stated some cognizable claims against certain Defendants. (Doc. #23.) The Court noted that Plaintiff failed to state any other claims against any other Defendants. The Court ordered Plaintiff either to file an amended complaint or to notify the Court that he wished to proceed only on the claims found to be cognizable. On April 12, 2010, Plaintiff notified the Court that he does not wish to amend and is willing to proceed only on the claims found to be cognizable. Based on Plaintiff’s notice, these Findings and Recommendations now issue. 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:

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1 1. Plaintiff's due process claims and equal protection claims be dismissed, and  
2 Plaintiff's Eighth Amendment Claims against Defendants Calderon and Gradillo be  
3 dismissed; and

4 2. Defendants Calderon and Gradillo be dismissed from this action.

5 These Findings and Recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
7 days after being served with these Findings and Recommendations, any party may file written  
8 objections with the Court and serve a copy on all parties. Such a document should be captioned  
9 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
10 shall be served and filed within ten (10) days after service of the objections. The parties are advised  
11 that failure to file objections within the specified time may waive the right to appeal the District  
12 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 IT IS SO ORDERED.

16 **Dated:** April 15, 2010

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE