

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
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PHILLIP JON ROSEMBLUM,
Plaintiff,

CASE NO. 1:05-cv-01473-LJO-WMW PC
FINDINGS AND RECOMMENDATIONS

v.

C/O ELLIS, 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. July 31, 2008, the Court issued an order finding that Plaintiff's complaint states cognizable claims against Defendant Ellis for a violation of the Eighth Amendment, but does not state a cognizable due process or supervisory liability claim against Defendants Vasquez or Robles. 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 September 22, 2008, 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 Defendant Vasquez and Robles be dismissed, and Plaintiff's due process and supervisory liability claims be dismissed.:

These Findings and Recommendations will be submitted to the United States District Judge

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

7
8 IT IS SO ORDERED.

9 **Dated: February 10, 2009**

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28