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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RAYMOND HERNANDEZ,

1:06-cv-00258 OWW YNP SMS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS

v.

S. DANIELSON, 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. This action proceeds on the Second Amended Complaint filed March 14, 2008. On June 15, 2009, the Court issued an order finding that Plaintiff’s complaint states cognizable claims against Defendants Richardson, Shu and Kim for violation of the Eighth Amendment, but does not state a cognizable Fourteenth Amendment claim and does not state any claims against Defendants Danielson, Nichols, Alvarez, Contreras and Galaviz. 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 June 26, 2009, 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 (9<sup>th</sup> 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:

1           1.       Plaintiff's Fourteenth Amendment Claim be dismissed.

2           2.       Defendants Danielson, Nichols, Alvarez, Contreras and Galaviz be dismissed from  
3                    this action.

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:** July 2, 2009

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE