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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LUMPKIN WILLIAMS,

NO. 1:06-cv-01569 AWI YNP GSA (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS

v.

GARZA, 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 September 22, 2009, the Court issued an order finding that Plaintiff’s second amended complaint states cognizable claims against certain defendants, but does not state a cognizable against Defendants Trimble, Myers and Fresno County Sheriff’s Investigative Division. Plaintiff also failed to state a claim on his allegations regarding medical care and failure to report. 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 October 13, 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 Defendants Trimble, Myers, and Fresno County Sheriff’s Investigative Divsion, be dismissed. IT IS FURTHER

1 RECOMMENDED that Plaintiff's claims regarding medical care and failure to report be  
2 dismissed.

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

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12 IT IS SO ORDERED.

13 **Dated: October 21, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE