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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

WADE BUSH,

Plaintiff,

v.

JAMES A. YATES, et al.,

Defendants.

CASE NO. 1:06-cv-01904-AWI-SMS PC

ORDER DISMISSING CERTAIN CLAIMS AND  
DEFENDANTS PURSUANT TO PLAINTIFF’S  
NOTICE, AND REFERRING MATTER BACK  
TO MAGISTRATE JUDGE TO ISSUE SERVICE  
DOCUMENTS

(Docs. 34-36)

Plaintiff Wade Bush (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983 and California tort law. Plaintiff filed this action on December 29, 2006. (Doc. 1.) On May 3, 2007, the Magistrate Judge dismissed Plaintiff’s complaint, with leave to amend, for failure to state any claims upon which relief may be granted. 28 U.S.C. § 1915A. (Doc. 13.)

Plaintiff filed an amended complaint on June 7, 2007. (Doc. 18.) On December 13, 2007, the Honorable Arthur L. Alarcon, to whom this action had been reassigned temporarily, issued an order dismissing the amended complaint for failure to comply with Federal Rule of Civil Procedure 8(a). 28 U.S.C. § 1915A. (Doc. 24.) Plaintiff filed a [second amended complaint](#) on August 1, 2008. (Doc. 34.)

On February 4, 2009, the Magistrate Judge issued an [order](#) finding that the second amended complaint states claims against Defendants Merritt and Price for retaliation in violation of the First Amendment, and against Defendants Ortiz, Benyamin, Foreman, McCoy, Mattern, Coleman, Manasra, Duenas, Merritt, Rutter, Walls, and Robinson for denial of medical care in violation of the

1 Eighth Amendment. 28 U.S.C. § 1915A. (Doc. 35.) The Magistrate Judge found that no other  
2 claims are cognizable. Id. Plaintiff was given the option of either filing a third amended complaint  
3 curing the deficiencies in his claims or notifying the Court of his willingness to proceed only on the  
4 claims found to be cognizable. On February 19, 2009, Plaintiff filed a notice stating that he is  
5 willing to proceed only on the claims found to be cognizable in the screening order and does not  
6 intend to amend. (Doc. 36.) In addition, Plaintiff notified the Court that he is voluntarily dismissing  
7 Defendant Merritt from this action. (Id.)

8 Accordingly, pursuant to 28 U.S.C. § 1915A and Plaintiff's notice filed February 19, 2009,  
9 it is HEREBY ORDERED that:

- 10 1. This action for damages shall proceed on Plaintiff's second amended complaint, filed  
11 August 1, 2008, against Defendant Price for retaliation in violation of the First  
12 Amendment, and against Defendants Ortiz, Benyamin, Foreman, McCoy, Mattern,  
13 Coleman, Manasra, Duenas, Rutter, Walls, and Robinson for denial of medical care  
14 in violation of the Eighth Amendment;
- 15 2. Plaintiff's Eighth Amendment medical care claim against Defendants Yates,  
16 Igbinsosa, Elliot, and Price, and Plaintiff's supervisory liability claim against  
17 Defendants Tilton, Kanan, Yates, Igbinsosa, Foreman, McCoy, and Price are  
18 dismissed, with prejudice, for failure to state a claim upon which relief may be  
19 granted;
- 20 3. Plaintiff's state law tort claims are dismissed, without prejudice, for failure to allege  
21 compliance with the California Tort Claims Act in the second amended complaint;
- 22 4. Defendants Yates, Igbinsosa, Elliot, Tilton, and Kanan are dismissed from this action  
23 based on Plaintiff's failure to state any claims upon which relief may be granted  
24 against them;
- 25 5. Defendant Merritt is dismissed from this action based on Plaintiff's notice of  
26 voluntary dismissal; and

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1           6.     This matter is referred back to the Magistrate Judge for issuance of service  
2                   documents.

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4 IT IS SO ORDERED.

5 **Dated:** April 8, 2009

/s/ Anthony W. Ishii  
CHIEF UNITED STATES DISTRICT JUDGE

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