

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8  
9 LON CARTER, CASE NO. 1:07-cv-01325-OWW-WMW PC

10 Plaintiff,

11 v. FINDINGS AND RECOMMENDATIONS

12 NICK DAWSON, et al.,

13 Defendants.

14  
15 \_\_\_\_\_ /  
16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action  
17 pursuant to 42 U.S.C. § 1983. On January 30, 2009, the Court issued an order finding that  
18 Plaintiff's complaint states cognizable claims against Defendants Dawson and Mendoza-Powers, but  
19 does not state a cognizable claim against the remaining Defendants. The Court ordered Plaintiff to  
20 either file an amended complaint or notify the Court of his willingness to proceed only on the claims  
21 found to be cognizable. On February 20, 2009, Plaintiff notified the Court that he does not wish to  
22 amend and is willing to proceed on the claims found cognizable. Based on Plaintiff's notice, this  
23 Findings and Recommendations now issues. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9<sup>th</sup> Cir.  
24 1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing  
25 for failure to state a claim).

26 Accordingly, it is HEREBY RECOMMENDED that Defendants Weinstein, Karr, Ndoa and  
27 Bear be dismissed, and Plaintiff's claims against the appeal reviewers be dismissed.

28 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: April 3, 2009**

10 **/s/ William M. Wunderlich**  
11 UNITED STATES MAGISTRATE JUDGE

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