# UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| FRANK B. COCKREALL, | CASE NO. 1:08-cv-00259-AWI-WMW PC |
| Plaintiff, | FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF CLAIMS |
| v. | (Doc. 1) |
| W. J. SULLIVAN, et al., | |
| Defendants. | |
| _____/ | |

**Findings and Recommendations Following Screening of Complaint**

**I.      Procedural History**

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 law.  Plaintiff filed this action on February 21, 2008. On November 19, 2008, the Court issued an order finding that Plaintiff's complaint states cognizable claims against Defendant Avalos for a violation of the First Amendment.  The order noted that the complaint did not state a claim against Defendant Sullivan.  The complaint failed to state a claim for access to courts, or for a violation of the Eighth Amendment.  On December 15, 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.

Accordingly,   IT IS HEREBY RECOMMENDED that Defendant Sullivan be dismissed, and Plaintiff's claims of access to courts and conditions of confinement in violation of the Eighth Amendment be dismissed.

1

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

2    assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l).  Within **thirty (30)**

3    **days** after being served with these Findings and Recommendations, plaintiff may file written

4    objections with the Court.  The document should be captioned "Objections to Magistrate Judge's

5    Findings and Recommendations."  Plaintiff is advised that failure to file objections within the

6    specified time may waive the right to appeal the District Court's order.  <u>Martinez v. Ylst</u>, 951 F.2d

7    1153 (9th Cir. 1991).

8

9    IT IS SO ORDERED.

10   **Dated:    January 30, 2009**                          /s/  **William M. Wunderlich**
                                                              UNITED STATES MAGISTRATE JUDGE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28