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FRED PRICE, 10

Plaintiff,

1:08-cv-00425 AWY YNP GSA (PC)

FINDINGS AND RECOMMENDATIONS

v.

S. R. CUNNINGHAM, et al.,

Defendants.

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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 12, 2008, the Court issued an order finding that Plaintiff's complaint states cognizable claims against Defendants Cunningham and Mullins for violation of the First and Eighth Amendments, but does not state a cognizable Fourteenth Amendment claim. Plaintiff also fails to state any claims against Defendants Gambline, Hartman, Mack, Large, Sailor, Lynker or Hopkins. 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 March 1, 2010, 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 (9th Cir. 1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing for failure to state a claim).

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Accordingly, it is HEREBY RECOMMENDED that:

1. This action proceed on Plaintiff's complaint against Defendants Cunningham and 1 2 Mullins for violations of the First and Eighth Amendments; 3 2. Plaintiff's Fourteenth Amendment claim be dismissed for failure to state a claim; 4 and 5 3. Defendants Gambline, Hartman, Mack, Large, Sailor, Lynker and Hopkins be 6 dismissed based on Plaintiff's failure to state any claims against him. 7 These Findings and Recommendations will be submitted to the United States District Judge 8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within thirty (30) 9 days after being served with these Findings and Recommendations, plaintiff may file written 10 objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the 11 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 12 13 1153 (9th Cir. 1991). 14 15 16 IT IS SO ORDERED. 17 **Dated:** March 3, 2010 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 18 19 20 21 22 23 24 25 26 27 28