## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

8 9 DANNY JAMES COHEA,

CASE NO. 1:08-cv-01186-LJO-YNP-SMS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS

V.

12 D. ADAMS, 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 February 26, 2009, the Court issued an order finding that Plaintiff's complaint states cognizable claims against certain Defendants for retaliation and access to the courts, but does not state a cognizable claim for due process and equal pProtection and does not state any claims against Defendant Guzman. 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 June 4, 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 (9th 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:

1. Plaintiff's Equal Protection and Due Process claim be dismissed.

2. Defendant Guzman be dismissed based on Plaintiff's failure to state any claims against him. These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within thirty (30) days after being served with these Findings and Recommendations, plaintiff may file written 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 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). IT IS SO ORDERED. Dated: <u>August 13, 2009</u> /s/ Sandra M. Snyder UNITED STATES MAGISTRATE JUDGE