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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES RASBERRY,

Plaintiff,

1: 08 CV 01767 OWW YNP GSA (PC)

vs.

ORDER RE: FINDINGS &
RECOMMENDATIONS (#20)

A. TREVINO, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se in this civil rights action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On October 22, 2009, [findings and recommendations](#) were entered, recommending that Defendants' motion to dismiss be granted and Plaintiff be granted leave to file an amended complaint. Plaintiff was provided an opportunity to file objections within thirty days. Plaintiff has not filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 73-305, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and proper analysis.

1 Accordingly, THE COURT HEREBY ORDERS that:

- 2 1. The Findings and Recommendations issued by the Magistrate Judge on
3 October 22, 2009, are adopted in full; and
- 4 2. Defendants' motion to dismiss is granted.
- 5 3. Plaintiff shall, within thirty days of the date of service of this order, either:
- 6 a. Notify the court of his willingness to dismiss his Eighth Amendment
7 claims and proceed only on his Fourteenth Amendment equal protection
8 claims; or
- 9 b. File an amended complaint curing the deficiencies identified in the
10 October 22, 2009, recommendation.
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15 IT IS SO ORDERED.

16 **Dated: February 12, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE