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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BRANDON L. SHERMAN,

NO. 1:09 cv 00420 LJO YNP SMS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS

v.

WILLIAM MCGUINNESS, M.D., 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 June 29, 2009, the Court issued an order finding that Plaintiff’s complaint states cognizable claims against Defendants Walker, Rocha, Pinkerton, Martinez and Rivera for violation of the Eighth Amendment, but does not state a cognizable against the remaining defendants. 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 July 13, 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 retaliation claims be dismissed.
2. Defendants Jones, Gonzales, Carrasco, Zanchi, Peterson, Worrell, Barrozo and

1 Hirsch be dismissed.

2 These Findings and Recommendations will be submitted to the United States District
3 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty**
4 **(30) days** after being served with these Findings and Recommendations, plaintiff may file written
5 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
6 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
7 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
8 1153 (9th Cir. 1991).

9
10 IT IS SO ORDERED.

11 **Dated: August 26, 2009**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE