## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CASE NO. 1:09-cv-00478-AWI-YNP-SMS (PC)

Plaintiff,

JESSE EDWARD BEJARAN,

DERRAL ADAMS, et al.,

v.

FINDINGS AND RECOMMENDATIONS

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 November 10, 2009, the Court issued an order finding that Plaintiff's complaint states cognizable claims against Defendants Junious, Gomez and Berna for violation of the Eighth Amendment, but does not state a cognizable Fourteenth Amendment claim against the remaining defendants. On December 7, 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 Plaintiff's Fourteenth Amendment claim be dismissed and Defendants Adams, Machenro, Rodriguez, Silva, Lopez-Espinosa, Briggs, Rangel, CDCR and Corcoran State Prison be dismissed.

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>December 14, 2009</u> /s/ Sandra M. Snyder UNITED STATES MAGISTRATE JUDGE