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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

FLOYD EUGENE BENDER,

CASE NO. 1:09-cv-00576 YNP SMS (PC)

Plaintiff,

ORDER DISMISSING DEFENDANTS

v.

W. J. SULLIVAN, 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. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

This action proceeds on the original complaint filed on March 27, 2009. On February 19, 2010, the court issued an order finding that Plaintiff’s complaint states cognizable claims against Defendants Williams, Bryant and Allison 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 February 26, 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 order now issues. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9<sup>th</sup> 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 ORDERED that:

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1. This action proceeds on Plaintiff's complaint, filed March 27 2009, against Defendants Bryant, Allison and Williams for violation of the Eighth Amendment.
2. Defendants Sullivan, Grannis, Gonzales, Noyce, McConnell, Tony and Miller are DISMISSED based on Plaintiff's failure to state any claims against them.

IT IS SO ORDERED.

**Dated:** March 8, 2010

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE