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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BENITO MARQUEZ,
Plaintiff,
v.
L. McEWEN, et al.,
Defendants.

Case No. CV 15-7911 R (SS)
**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Complaint in the above-captioned matter, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. The time for filing Objections to the Report and Recommendation has passed and no Objections have been received. Accordingly, the Court accepts and adopts the findings, conclusions and recommendations of the Magistrate Judge, amended as follows.

Following the issuance of the Report and Recommendation, Plaintiff filed a Notice of Voluntary Dismissal of his claims against Warden McEwen. Accordingly, Defendants' Motion to

1 Dismiss the claims against Warden McEwen and the Magistrate
2 Judge's recommendations pertaining to that Defendant are now
3 moot.

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5 Accordingly, IT IS ORDERED THAT:

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7 1. Defendants' Motion to Dismiss the First Amended
8 Complaint is DENIED.

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10 2. Defendants' Motion to Dismiss is DENIED to the extent
11 that it is based on Plaintiff's alleged failure to exhaust, but
12 without prejudice to reasserting the defense on summary judgment.

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14 3. Defendants' Motion to Dismiss is DENIED to the extent
15 that it seeks dismissal of the claims against Officer Aguirre and
16 Dr. Fitter for failure to state a claim pursuant to Federal Rule
17 of Civil Procedure 12(b)(6).

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19 4. Defendants' Motion to Dismiss is DENIED AS MOOT to the
20 extent that it seeks dismissal of the supervisory liability claim
21 against Warden McEwen for failure to state a claim pursuant to
22 Rule 12(b)(6).

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24 5. Defendants' Motion to Dismiss is DENIED to the extent
25 that it is based on Defendants' claims of qualified immunity, but
26 without prejudice to reasserting the defense on summary judgment.

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28 6. Defendants Officer Aguirre and Dr. Fitter are ORDERED

1 to file Answers to the First Amended Complaint, as amended by the
2 dismissal of the claims against Warden McEwen, within fourteen
3 days of the date of this Order.

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5 The Clerk shall serve copies of this Order by United States
6 mail on Plaintiff and on counsel for Defendants.

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8 DATED: September 9, 2016

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MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

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