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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 MARQUISE DeANGELO LOFTIS,
12 Plaintiff

13 v.

14 GARY SALCEDO and NURSE E.
15 GRANT,
16 Defendants.

Case No. 2:18-cv-3263-JFW (GJS)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, all
18 pleadings, motions, and other documents filed in this action, including the Report
19 and Recommendation of the assigned United States Magistrate Judge. The deadline
20 to file Objections to the Report has passed, and no Objections have been filed with
21 the Court.
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23 Accordingly, **IT IS ORDERED** that:

- 24 (1) The Magistrate Judge's Report and Recommendation is approved and
25 accepted.
26 (2) Defendants' Motion to Dismiss ("Motion") [Dkt. 32] is GRANTED in
27 part and DENIED in part, pursuant to Fed. R. Civ. P. 12(b)(6), as follows:
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- 1 (a) the Motion is DENIED as to Plaintiff's Eighth Amendment
2 Excessive Force claim against Defendant Salcedo;
- 3 (b) the Motion is GRANTED with respect to Plaintiff's denial of
4 medical care claim against Defendant Grant, and this claim is
5 DISMISSED with leave to amend;
- 6 (c) the Motion is GRANTED with respect to Plaintiff's failure to
7 supervise/train claim against Defendant Salcedo, and this claim is
8 DISMISSED with leave to amend;
- 9 (d) the Motion is GRANTED with respect to Plaintiff's deliberate
10 indifference to safety claim against Defendant Salcedo, and this claim
11 is DISMISSED without leave to amend;
- 12 (3) Plaintiff's claims against the Doe Defendants are dismissed without
13 prejudice;
- 14 (4) Plaintiff is granted leave to file a First Amended Complaint consistent
15 with the Report and Recommendation within 30 days of this Order;¹ and
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22 ¹ If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly designate on
23 the face of the document that it is the "First Amended Complaint," it must bear the docket number
24 assigned to this case, and it must be retyped or rewritten in its entirety, preferably on the court-
25 approved form. Plaintiff shall not include new defendants or new allegations that are not
26 reasonably related to the claims asserted in the FAC. In addition, the First Amended Complaint
27 must be complete without reference to the Complaint, or any other pleading, attachment, or
28 document. In lieu of filing an amended complaint, Plaintiff may voluntarily dismiss the defective
claims against Defendants Grant and Salcedo without prejudice, pursuant to Federal Rule of Civil
Procedure 41(a), and the case will proceed against Defendant Salcedo of Plaintiff's Eighth
Amendment claim. The Clerk of Court is directed to mail Plaintiff a blank Notice of Dismissal
Form, which the Court encourages Plaintiff to use.

1 (5) Plaintiff's failure, if any, to timely to file a First Amended Complaint
2 will result in this action proceeding solely on the remaining claims as against the
3 remaining defendant (*i.e.*, the Eighth Amendment Excessive Force claim against
4 Defendant Salcedo) absent further order of the Court.

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6 **IT IS SO ORDERED.**

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8 DATE: October 9, 2019

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11 JOHN F. WALTER
12 UNITED STATES DISTRICT JUDGE
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