

1  
2  
3  
4  
5 **IN THE UNITED STATES DISTRICT COURT**  
6 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
7

8 MARCIAL PLATA,

1:06-cv-01023-LJO-GSA-PC

9 Plaintiff,

10 vs.

11  
12 WOODFORD, et al.,

13 Defendants.  
14  
15 \_\_\_\_\_/

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST DEFENDANTS  
WATSON, CORONA, AND JOHN/JANE  
DOE #6, ON PLAINTIFF'S CLAIMS FOR  
RETALIATION AND FAILURE TO PROTECT,  
AND ALL OTHER CLAIMS AND  
DEFENDANTS BE DISMISSED

OBJECTIONS, IF ANY, DUE IN 30 DAYS

16 Plaintiff Marcial Plata ("Plaintiff") is a prisoner proceeding pro se and in forma pauperis in this  
17 civil rights action pursuant to 42 U.S.C. § 1983. The case now proceeds on the First Amended  
18 Complaint filed by Plaintiff on December 10, 2008. (Doc. 19.) The Court screened Plaintiff's First  
19 Amended Complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief  
20 under § 1983 against defendants Correctional Officer ("C/O") Watson, C/O Corona, and John/Jane Doe  
21 #6 for two instances of retaliation -- on October 12, 2003 and December 19, 2003 -- in violation of the  
22 First Amendment, and for failure to protect Plaintiff, in violation of the Eighth Amendment. (Doc. 21.)  
23 Plaintiff filed the Second Amended Complaint on April 24, 2009. (Doc. 26.) On June 4, 2010, the court  
24 dismissed the Second Amended Complaint for failure to state a claim and issued an order requiring  
25 Plaintiff to either file a Third Amended Complaint or notify the court of his willingness to proceed on  
26 the First Amended Complaint with the claims found cognizable by the court. (Doc. 32.) On October  
27 4, 2010, Plaintiff filed written notice to the court that he is willing to proceed on the First Amended  
28 Complaint with the claims found cognizable by the court. (Doc. 38.)

1 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 2 1. This action proceed with Plaintiff's First Amended Complaint, filed on December 10,  
3 2008, only against defendants Correctional Officer ("C/O") D. Watson, C/O E. Corona,  
4 and John/Jane Doe #6 for two instances of retaliation -- on October 12, 2003 and  
5 December 19, 2003 -- in violation of the First Amendment, and for failure to protect  
6 Plaintiff, in violation of the Eighth Amendment;
- 7 2. All remaining claims and defendants be dismissed from this action;
- 8 3. Plaintiff's due process claims, claims for an inadequate inmate appeals process,  
9 supervisory liability claims, and claims for failure to properly train and supervise be  
10 dismissed for failure to state a claim upon which relief may be granted under § 1983; and
- 11 4. Defendants California Department of Corrections Director Jeanne S. Woodford, PVSP  
12 Warden James A. Yates, Chief Deputy Warden A. Malfi, Associate Warden B. J. Hill,  
13 Associate Warden W. J. Juarez, Captain V. J. Quinn-Robicheaux, Lieutenant K. R. Nash,  
14 Lieutenant V. Ramirez, Lieutenant J. C. Smith, Sergeant B. Cramer, Sergeant B. Torres,  
15 C/O R. Juarez, C/O J. Duty, C/O J. Lopez, C/O Silva, C/O Pasillas, C/O Guerra, C/O  
16 Walker, C/O Espino, C/O D. Gonzales, C/O K. Session, C/O P. Sanchez, John/Jane Does  
17 #1-5, and John/Jane Does #7-35 be dismissed based on Plaintiff's failure to state any  
18 claims upon which relief may be granted against them under § 1983.

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

25  
26 IT IS SO ORDERED.

27 **Dated: October 15, 2010**

**/s/ Gary S. Austin**  
**UNITED STATES MAGISTRATE JUDGE**