

1 Rincon, Hernandez, Deathridge, and Huckabay for failure to protect Plaintiff; against defendants Tucker,
2 Green, and Huckabay for retaliation; and against defendants Tucker, Thompson, and Melendez for using
3 excessive force against Plaintiff. On March 24, 2011, Plaintiff was given leave to either file a Third
4 Amended Complaint, or in the alternative, to notify the Court that he does not wish to file a Third
5 Amended Complaint and instead wishes to proceed only on the claims identified by the Court as
6 viable/cognizable in the Court's order. (Doc. 27.) On April 18, 2011, Plaintiff filed written notice to
7 the Court that he wishes to proceed only on the claims found cognizable by the Court. (Doc. 29.)

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

- 9 1. This action proceed against defendant Tucker for subjecting Plaintiff to adverse
10 conditions of confinement; against defendants Tucker, Green, Lee, Rincon, Hernandez,
11 Deathridge, and Huckabay for failure to protect Plaintiff; against defendants Tucker,
12 Green, and Huckabay for retaliation; and against defendants Tucker, Thompson, and
13 Melendez for using excessive force against Plaintiff;
- 14 2. All remaining claims and defendants be dismissed from this action; and
- 15 3. Defendants RN Ms. Davis, Med Tech Mr. Chapman, and H. Martinez be dismissed from
16 this action based on Plaintiff's failure to state any claims upon which relief may be
17 granted against them.

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

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26 IT IS SO ORDERED.

27 Dated: April 19, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE