-GSA (PC) Ortega	a v. Yates et al I	Doc. 22
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8	IN THE UNITED ST	CATES DISTRICT COURT
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	EDWARD ORTEGA,	1:09-cv-01476-AWI-GSA-PC
12	Plaintiff,	FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS ACTION PROCEED ONLY AGAINST DEFENDANT DR. DUENAS ON PLAINTIFF'S EIGHTH AMENDMENT CLAIM, AND ALL OTHER CLAIMS AND DEFENDANTS BE BE DISMISSED
13	VS.	
14 15	WARDEN JAMES A. YATES, et al.,	
16	Defendants.	OBJECTIONS, IF ANY, DUE IN 30 DAYS
17		
18	Plaintiff Edward Ortega ("Plaintiff") is a state prisoner proceeding pro se in this civil rights	
19	action pursuant to 42 U.S.C. § 1983. The case now proceeds on the First Amended Complaint filed by	
20	Plaintiff on August 26, 2010. (Doc. 14.) The First Amended Complaint names Dr. Felix Igbinosa, Dr.	
21	Duenas, Nurse Kratts, and Nurse Adonis as defendants, and alleges claims for inadequate medical care	
22	in violation of the Eighth Amendment. <u>Id.</u>	
23	The Court screened Plaintiff's First Amended Complaint pursuant to 28 U.S.C. § 1915A and	
24	found that it states a cognizable claim for relief under section 1983 against Defendant Dr. Duenas, for	
25	providing inadequate medical care in violation of the Eighth Amendment. On September 16, 2011,	
26	Plaintiff was given leave to either file a Second Amended Complaint, or in the alternative, to notify the	
27	Court that he does not wish to file a Second Amended Complaint and instead is willing to proceed only	
28	on the claims identified by the Court as viable/cognizable in the Court's order. (Doc. 20.) On	
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September 29, 2011, Plaintiff filed written notice to the Court that he wishes to proceed only on the claims found cognizable by the Court. (Doc. 21.)

Based on the foregoing, it is HEREBY RECOMMENDED that:

- 1. This action proceed only against defendant Dr. Duenas, for inadequate medical care in violation of the Eighth Amendment;
- 2. All remaining claims and defendants be dismissed from this action;
- 3. Plaintiff's claims against defendants Dr. Felix Igbinosa, Nurse Kratts, and Nurse Adonis be dismissed from this action based on Plaintiff's failure to state any claims upon which relief may be granted against them; and
- 4. Plaintiff's Valley Fever claims be dismissed for failure to state a claim upon which relief may be granted under section 1983.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within thirty (30) days after being served with these Findings and Recommendations, any party may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Replies to the objections shall be served and filed within ten (10) days after service of the objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated

Dated: October 3, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE