

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENITO REYES,

Plaintiff,

vs.

J. SINGH, et al.,

Defendants.

1:11-cv-00362-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST
DEFENDANTS NYENKE AND
MARTINEZ ON PLAINTIFF'S MEDICAL
CLAIMS, AND THAT ALL OTHER
CLAIMS AND DEFENDANTS BE
DISMISSED FROM THIS ACTION

OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS

Benito Reyes ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's original Complaint, filed on March 3, 2011. (Doc. 1.) The Complaint names defendants J. Singh (LVN), Dr. Chinyere Nyenke, and Nurse Rose Martinez (RN), for inadequate medical care.

The court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A and found that it states cognizable claims for relief under § 1983 against only defendants Dr. Nyenke and Nurse Martinez, for inadequate medical care in violation of the Eighth Amendment. (Doc. 11.) On April 15, 2013, Plaintiff was given leave to either file an amended complaint or notify the court that he is agreeable to proceeding only with the claims found cognizable by the Court. Id.

1 On April 25, 2013, Plaintiff filed written notice to the court that he does not wish to file an
2 amended complaint and wishes to proceed only against defendants Dr. Nyenke and Nurse
3 Martinez on the Eighth Amendment medical claim. (Doc. 12.)

4 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 5 1. This action proceed only against Dr. Chinyere Nyenke and Nurse Rose
6 Martinez, for inadequate medical care in violation of the Eighth Amendment;
- 7 2. All remaining claims and defendants be dismissed from this action;
- 8 3. Defendant LVN J. Singh be dismissed from this action based on Plaintiff's
9 failure to state any claims upon which relief may be granted against him.

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

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21 IT IS SO ORDERED.

22 Dated: April 26, 2013

23 /s/ Gary S. Austin
24 UNITED STATES MAGISTRATE JUDGE
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