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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 CARLOS FRANCISCO LOPEZ,

12 Plaintiff,

13 vs.

14 V. SHULTZ, et al.,

15 Defendants.  
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1:16-cv-00038-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY AGAINST:  
(1) DEFENDANT SHULTZ FOR FAILURE  
TO PROTECT; (2) DEFENDANTS SHULTZ  
AND NURSE DOE #6 FOR INADEQUATE  
MEDICAL CARE; AND (3) DEFENDANTS  
ZANCHI AND SERGEANT DOE #5 FOR  
RETALIATION; AND THAT ALL OTHER  
CLAIMS AND DEFENDANTS BE  
DISMISSED

OBJECTIONS, IF ANY, DUE IN 20 DAYS

21 Carlos Francisco Lopez (“Plaintiff”) is a former state prisoner proceeding *pro se* and *in*  
22 *forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the  
23 Complaint commencing this action on January 12, 2016. (ECF No. 1.) The Complaint names  
24 as defendants V. Shultz (Library Technical Assistant, CCI), Kim Holland (Warden, CCI), J.  
25 Wood (Correctional Counselor II, CCI), M. Dailo (Correctional Counselor II, CDI), J. Zanchi  
26 (Associate Governmental Program Analyst, CCI), Correctional Officer Rodriguez, Doe #1  
27 (Chief Deputy Warden, CCI), Doe #2 (Associate Warden, CCI), Doe #3 (Captain, CCI), Doe  
28 #4 (Lieutenant, CCI), Doe #5 (Sergeant, CCI), and Doe #6 (Nurse, CCI).

1 The Court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A and found that  
2 it states cognizable claims as follows: (1) against Defendant Shultz for failure to protect  
3 Plaintiff, in violation of the Eighth Amendment; (2) against Defendants Rodriguez and Nurse  
4 Doe #6 for inadequate medical care, in violation of the Eighth Amendment; and (3) against  
5 Defendants Zanchi and Sergeant Doe #5 for retaliation in violation of the First Amendment.  
6 (ECF No. 11.) The court found no other claims. (Id.) Plaintiff also alleged violation of state  
7 law by Defendants.<sup>1</sup>

8 On November 14, 2016, Plaintiff was granted leave to either file an Amended  
9 Complaint or notify the Court that he is willing to proceed only on the claims found cognizable  
10 by the Court. (Id.) On November 21, 2016, Plaintiff filed a notice informing the Court that he  
11 is willing to proceed only on the cognizable claims against defendants Shultz, Rodriguez,  
12 Zanchi, and Does #5 and #6. (ECF No. 16.)

13 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 14 1. This action proceed only against (1) Defendant Shultz for failure to protect  
15 Plaintiff, in violation of the Eighth Amendment; (2) Defendants Rodriguez and  
16 Nurse Doe #6 for inadequate medical care, in violation of the Eighth  
17 Amendment; (3) Defendants Zanchi and Sergeant Doe #5 for retaliation in  
18 violation of the First Amendment; and (4) related state law claims;
- 19 2. All remaining claims and defendants be dismissed from this action;
- 20 3. Plaintiff's claims for Supervisory Liability, Denial of Access to Courts, Prison  
21 Appeals Process, and Promulgation of Policy, be dismissed from this action  
22 based on Plaintiff's failure to state a claim; and
- 23 4. This case be referred back to the Magistrate Judge for further proceedings,  
24 including initiation of service.

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28 <sup>1</sup> The court shall exercise supplemental jurisdiction over any related state law claims under 28  
U.S.C. § 1367. However, at this stage of the proceedings, the Court makes no determination about the viability of  
Plaintiff's state law claims.

1           These Findings and Recommendations will be submitted to the United States District  
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
3 **twenty (20) days** after being served with these Findings and Recommendations, Plaintiff may  
4 file written objections with the Court. The document should be captioned “Objections to  
5 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
6 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
7 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
8 (9th Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: December 29, 2016

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