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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MIGUEL G. SIFUENTES,

12 Plaintiff,

13 v.

14 DR. OLA, et al.,

15 Defendants.
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1:16-cv-00241-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
OLA FOR FAILURE TO PROVIDE
ADEQUATE MEDICAL CARE IN
VIOLATION OF THE EIGHTH
AMENDMENT, AND THAT ALL OTHER
CLAIMS AND DEFENDANTS BE
DISMISSED**

OBJECTIONS, IF ANY, DUE IN 14 DAYS

20 Miguel G. Sifuentes (“Plaintiff”) is a state prisoner proceeding *pro se* with this civil
21 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this
22 action on February 22, 2016. (ECF No. 1.) Plaintiff is not proceeding *in forma pauperis*.¹ The
23 court screened the Complaint and issued an order on May 11, 2016, dismissing the Complaint
24 for failure to state a claim, with leave to amend. (ECF No. 5.) On April 26, 2017, Plaintiff
25 filed the First Amended Complaint. (ECF No. 21.)

26 On March 15, 2018, the court screened the First Amended Complaint and entered
27 findings and recommendations, recommending that the First Amended Complaint be dismissed,
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¹ On February 25, 2016, Plaintiff paid the filing fee in full for this case. (Court Record.)

1 with prejudice, for failure to state a claim upon which relief may be granted. (ECF No. 23.)
2 On July 18, 2018, the district judge issued an order adopting *in part* the findings and
3 recommendations. (ECF No. 25.) The district judge found that Plaintiff states a cognizable
4 medical claim in the First Amended Complaint against defendant Dr. Ola. (Id.) The district
5 judge also denied Plaintiff's request for court-appointed counsel and dismissed Plaintiff's state
6 law claim without prejudice for failure to comply with the claim presentment requirements of
7 the California Government Claims Act. (Id.) The district judge's order referred the case back
8 to the undersigned for further proceedings consistent with the order. (Id.)

9 On July 23, 2018, the court issued an order requiring Plaintiff to either (1) file a Second
10 Amended Complaint, or (2) notify the court that he is willing to proceed only with the medical
11 claim found cognizable by the court. (ECF No. 26.) On February 19, 2019, Plaintiff filed a
12 motion for "30 days in which to file the Government claim in the appropriate court or if the
13 court does not grant this leave, to proceed on the 8th Amendment claim that has already been
14 filed." (ECF No. 35.) On February 25, 2019, the court denied Plaintiff's motion. (ECF No.
15 36.)

16 In light of Plaintiff's notification that he wishes to proceed with his Eighth Amendment
17 medical claim if the court denies his motion for thirty days to file a Government claim, the
18 court now makes the following recommendation.

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

- 20 1. This action proceed only on Plaintiff's Eighth Amendment medical claim
21 against defendant Dr. Ola;
- 22 2. All remaining claims and defendants be dismissed from this action;
- 23 3. Plaintiff's state law claims be dismissed from this action based on Plaintiff's
24 failure to state any claims upon which relief may be granted;
- 25 4. Defendants Dr. Fortune, Dr. Goller, Keisl (RN), C. Douglas, J. Howard (LVN),
26 S. Cass, J. Padilla, C Hererd, B. Guam, M. Nadev (SRN II), Arola (RN), X.
27 Cano (CCII), John Doe (Chief Medical Officer), PVSP, CDCR, and unnamed
28 John/Jane Doe Defendants (doctors and nurses) be dismissed from this action

1 based on Plaintiff's failure to state any claims against them upon which relief
2 may be granted; and

3 5. This case be referred back to the Magistrate Judge for further proceedings,
4 including initiation of service of process.

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

12 IT IS SO ORDERED.

13 Dated: February 28, 2019

14 /s/ Gary S. Austin
15 UNITED STATES MAGISTRATE JUDGE