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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

REYNALDO SOLORZANO,

 Plaintiff,

 v.

S. FRAUENHEIM, et al.,

 Defendants.

Case No. 1:16-cv-00314-LJO-SAB-PC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, AND DISMISSING
CERTAIN DEFENDANTS AND CLAIMS
FOR THE FAILURE TO STATE A
COGNIZABLE CLAIM

(ECF No. 16)

Plaintiff Reynaldo Solorzano is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 19, 2017, the assigned Magistrate Judge issued findings and recommendations recommending that Defendants S. Frauenheim, Walker, R. Walker, J. Guerra, A. Florez, R. Rojas, Dr. J. Chokatos, and P.A Fortune be dismissed from this action for the failure to state a cognizable claim against them. (ECF No. 16.) The Magistrate Judge further recommended that this case proceed only against Does A, B, C, and D for failure to protect in violation of the Eighth Amendment. (Id.) The Findings and Recommendations were served on Plaintiff and contained notice that any objections must be filed within fourteen days after service of that order. (Id. at 2.) Plaintiff timely filed objections on August 2, 2017. (ECF No. 18.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
2 a *de novo* review of this case and carefully reviewed the entire file, including Plaintiff's
3 objections.

4 Plaintiff objects that certain prison officials he named as defendants may have knowledge
5 of the events at issue and may be able to provide evidence. Although those officials are being
6 dismissed from the case, Plaintiff is not precluded from obtaining evidence from such sources, if
7 relevant and appropriately sought under the Federal Rules of Civil Procedure. Plaintiff further
8 objects to the dismissal of a captain and a warden as defendants, arguing that they may be liable
9 for giving orders or based on a policy, even if they were not involved in the events at issue.
10 However, Plaintiff did not state any factual allegations that would support such a claim, and
11 Plaintiff did not name those officials as defendants in his most recent pleading.

12 Finally, Plaintiff objects to the dismissal of Dr. Chockatos and P.A. Fortune. Plaintiff
13 contends that they can be held liable based on the failure to refer him to a specialist for certain
14 diagnostic testing. The Court finds that Plaintiff's factual allegations, when liberally construed,
15 fail to plead facts showing that these medical providers were aware of a serious need for the
16 medical treatment Plaintiff contends he should have received, or that they were deliberately
17 indifferent to that need. Plaintiff was granted an opportunity to amend such allegations, and
18 declined to do so, suggesting he cannot state sufficient facts to state a cognizable claim.

19 Accordingly, the Court finds that the Findings and Recommendations are supported by
20 the record and by proper analysis.

21 Based on the foregoing, IT IS HEREBY ORDERED that:

- 22 1. The Findings and Recommendations issued on July 19, 2017 (ECF No. 16), are
23 adopted in full;
- 24 2. This case proceeds on Plaintiff's claim against Does A, B, C and D for the failure
25 to protect in violation of the Eighth Amendment;
- 26 3. All other claims, and Defendants S. Frauenheim, Walker, R. Walker, J. Guerra, A.
27 Florez, R. Rojas, Dr. J. Chokatos, and P.A Fortune, are dismissed from this action
28 based on Plaintiff's failure to state a claim upon which relief may be granted; and

