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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 DAPHNYE S. LUSTER,

12 Plaintiff,

13 vs.

14 RAUL H. AMEZCUA, et al.,

15 Defendants.
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1:16-cv-00554-LJO-GSA-PC

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF No. 26.)**

**ORDER FOR THIS CASE TO PROCEED
ONLY AGAINST DEFENDANT
AMEZCUA FOR RETALIATION UNDER
THE FIRST AMENDMENT, AND
DISMISSING ALL OTHER CLAIMS
AND DEFENDANTS FOR FAILURE TO
STATE A CLAIM
(ECF No. 24.)**

21 Daphnye S. Luster (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
22 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a
23 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

24 On August 27, 2018, the court entered [findings and recommendations](#), recommending
25 that this action proceed only against defendant Raul H. Amezcua for retaliation under the First
26 Amendment, and that all other claims be dismissed from this action based on Plaintiff’s failure
27 to state a claim. (ECF No. 26.) On September 13, 2018, Plaintiff filed a [statement](#) of non-
28 opposition to the findings and recommendations. (ECF No. 27.)

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this
2 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
3 court finds the findings and recommendations to be supported by the record and proper analysis.

4 Accordingly, **THE COURT HEREBY ORDERS** that:

- 5 1. The findings and recommendations issued by the Magistrate Judge on August 27,
6 2018, are ADOPTED in full;
- 7 2. This action now proceeds with Plaintiff's Second Amended Complaint, filed on
8 June 11, 2018, against defendant Raul H. Amezcua for retaliation under the First
9 Amendment;
- 10 3. All remaining claims and defendants are dismissed from this action;
- 11 4. Defendants Warden Debra K. Johnson, Captain M. Villegas, Sergeant L. Perez,
12 and Appeals Coordinator B. Fortner are dismissed from this action for Plaintiff's
13 failure to state any claims against them;
- 14 5. Plaintiff's claims for supervisory liability, failure to protect, and violation of due
15 process are dismissed from this action for Plaintiff's failure to state a claim upon
16 which relief may be granted;
- 17 6. The Clerk of Court is directed to reflect the dismissal of defendants Johnson,
18 Villegas, Perez, and Fortner from this case on the court's docket; and
- 19 7. This case is referred back to the Magistrate Judge for further proceedings,
20 including initiation of service of process.

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22 IT IS SO ORDERED.

23 Dated: September 22, 2018

/s/ Lawrence J. O'Neill
24 UNITED STATES CHIEF DISTRICT JUDGE
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