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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JOSE GARCIA,

12 Plaintiff,

13 v.

14 U. BANIGA, M.D., et al.,

15 Defendants.
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1:19-cv-01258-AWI-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
DR. RODRIGUEZ FOR INADEQUATE
MEDICAL CARE UNDER THE EIGHTH
AMENDMENT, AND THAT ALL OTHER
CLAIMS AND DEFENDANTS BE
DISMISSED**

OBJECTIONS, IF ANY, DUE IN 14 DAYS

23 Jose Garcia (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma pauperis* with this
24 civil rights action pursuant to 42 U.S.C. § 1983. On September 10, 2019, Plaintiff filed the
25 Complaint commencing this action. (ECF No. 1.) The Complaint names as defendants Plaintiff
26 names as defendants Dr. U. Baniga, Dr. Rodriguez, California Correctional Health Care Services
27 (CCHCS), and Does #1-5 (Medical Provider Policy Makers) (collectively, “Defendants”), and
28 brings claims for inadequate medical care under the Eighth Amendment, for creating or

1 implementing a flawed policy, for retaliation, and for improperly handling Plaintiff's prison
2 appeals.

3 The court screened the Complaint and found that Plaintiff states a cognizable claim
4 against defendant Dr. Rodriguez for failure to provide adequate medical care under the Eighth
5 Amendment, but no other claims against any of the Defendants. (ECF No. 8.) On September 23,
6 2019, the court issued a screening order requiring Plaintiff to either (1) file an Amended
7 Complaint, or (2) notify the court that he is willing to proceed only with the medical claim against
8 defendant Dr. Rodriguez found cognizable by the court. (Id.)

9 On October 7, 2019, Plaintiff notified the court that he is willing to proceed only with the
10 medical claim found cognizable by the court. (ECF No. 12.)

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

- 12 1. This action proceed only on Plaintiff's claim against defendant Dr. Rodriguez for
13 failure to provide adequate medical care under the Eighth Amendment;
- 14 2. All remaining claims and defendants be dismissed from this action;
- 15 3. Plaintiff's claims against Defendants for creating or implementing a flawed
16 policy, for retaliation, and for improperly handling Plaintiff's prison appeals be
17 dismissed from this action based on Plaintiff's failure to state any claims upon
18 which relief may be granted;
- 19 4. Defendants Dr. U. Baniga, California Correctional Health Care Services
20 (CCHCS), and Does #1-5 (Medical Provider Policy Makers) be dismissed from
21 this action based on Plaintiff's failure to state any claims against them upon which
22 relief may be granted; and
- 23 5. This case be referred back to the Magistrate Judge for further proceedings,
24 including initiation of service of process.

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
27 fourteen (14) days after the date of service of these Findings and Recommendations, Plaintiff
28 may file written objections with the Court. The document should be captioned "Objections to

1 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
2 objections within the specified time may waive the right to appeal the District Court’s order.

3 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 IT IS SO ORDERED.

6 Dated: October 10, 2019

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