1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 THEON OWENS, No. 2:16-cv-2750 JAM KJN P 12 Plaintiff, 13 **ORDER** v. 14 JOSEPH DEGAZIO, et al., 15 Defendants. 16 17 Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief 18 under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 19 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On October 3, 2017, the magistrate judge filed findings and recommendations herein 21 which were served on all parties and which contained notice to all parties that any objections to 22 the findings and recommendations were to be filed within fourteen days. Plaintiff and defendants 23 have filed objections to the findings and recommendations. (ECF Nos. 50, 65.) 24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this 25 court has conducted a <u>de novo</u> review of this case. Having carefully reviewed the entire file, the 26 court finds the findings and recommendations to be supported by the record and by proper 27 analysis. 28 ///// 1

## 1 Accordingly, IT IS HEREBY ORDERED that: 2 1. The findings and recommendations filed October 3, 2017, are adopted in full; and 3 2. Defendants' motion to dismiss (ECF No. 37) is granted as to the following claims: a) 4 claim alleging defendants Byers and Rashev denied plaintiff food; b) conspiracy claim against 5 defendant Staggs-Boatright; c) claim that defendant Okoroike denied plaintiff medical care in 6 violation of the Eighth Amendment; d) claim alleging verbal harassment by defendant Mercado; 7 e) due process claim against defendant Couch; f) claim that defendant Eldridge violated due 8 process by upholding alleged misconduct by defendant Couch; 9 3. Defendants' motion to dismiss (ECF No. 37) is denied as to the following claims: a) 10 claim alleging defendant Rashev used excessive force; b) failure to intervene claims against 11 defendants Guffee and Matthews; c) claim alleging defendant Mercado denied plaintiff an ice 12 pack; d) conspiracy claim against defendant Okoroike; e) conspiracy claim against defendant 13 Martineck; f) claims alleging due process violations by defendants Schultz and Eldridge based on 14 alleged denial of request to call witnesses and present documentary evidence, and insufficient 15 evidence to support disciplinary conviction; 16 4. Defendants Rashev, Guffee, Matthews, Mercado, Okoroike, Martinick, Schultz and 17 Eldridge are ordered to file an answer within thirty days of the date of this order. 18 DATED: March 19, 2018 19 /s/ John A. Mendez\_ 20 UNITED STATES DISTRICT COURT JUDGE 21 22 23 24 25 26 27 28