1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 BERNIE AYALA, No. 2:20-CV-2014-TLN-DMC 12 Plaintiff. 13 **ORDER** v. 14 FELTNER, et al., 15 Defendants. 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 18 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern 19 District of California local rules. 20 On June 13, 2023, the Magistrate Judge filed findings and recommendations herein which 21 were served on the parties and which contained notice that the parties may file objections within 22 the time specified therein. No objections to the findings and recommendations have been filed. The Court presumes that any findings of fact are correct. See Orand v. United States, 602 23 24 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. 25 See Robbins v. Carey, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law by the 26 magistrate judge are reviewed de novo by both the district court and [the appellate] court "). 27 Having reviewed the file, the Court finds the findings and recommendations to be supported by 28 the record and by the proper analysis. 1

Accordingly, IT IS HEREBY ORDERED that: 1. The findings and recommendations filed June 13, 2023 (ECF No. 54) are ADOPTED IN FULL; 2. Defendants' motion to dismiss (ECF No. 44) is DENIED as to the failure to protect claims against Defendants Artal, Feltner, and Gann; 3. Defendants' motion to dismiss (ECF No. 44) is GRANTED with leave to amend as to the failure to protect claims against Defendants Cribari, Gaetano, Salcedo, and Toles; 4. Defendants' motion to dismiss (ECF No. 44) is GRANTED with leave to amend as to Plaintiff's conspiracy claim; 5. Plaintiff may file a second amended complaint; 6. If Plaintiff does not file a second amended complaint within 30 days of the date of this order, the action shall proceed on Plaintiff's first amended complaint on his failure-to-protect claims against Defendants Artal, Feltner, and Gann only; and 7. The matter is referred back to the assigned Magistrate Judge for further proceedings. Date: August 4, 2023 Troy L. Nunley United States District Judge