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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALFRED MYLES,

 Petitioner,

 v.

R. J. RACKLEY,

 Respondent.

No. 2:16-cv-0278 TLN CKD P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 27, 2016, the Magistrate Judge filed findings and recommendations herein which were served on petitioner on November 9, 2016, and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner has not filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The Magistrate Judge’s conclusions of law are reviewed *de novo*. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the Court finds the findings and recommendations to be supported by the record and by the Magistrate Judge’s analysis.

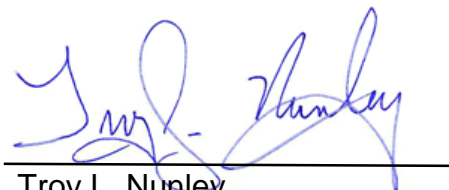
Accordingly, IT IS HEREBY ORDERED that:

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1. The findings and recommendations filed October 27, 2016, are adopted in full;
2. Respondent's motion to dismiss (ECF No. 14) is granted;
3. Claims 1 and 4 are dismissed without prejudice to refile in a separate action;
4. Claims 2 and 3 are dismissed with prejudice for failure to state a claim;
5. This action is referred back to the Magistrate Judge to proceed on Claim 5; and
6. The Court declines to issue the certificate of appealability referenced in 28 U.S.C. §

2253.

Dated: December 9, 2016



Troy L. Nunley
United States District Judge