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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAVON HANEY,  
Plaintiff,  
v.  
DR. RICHARD CROSS, et al.,  
Defendants.

No. 2:18-cv-1836 JAM KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. 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 5, 2020, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within thirty days. Plaintiff filed objections to the findings and recommendations.

In his objections, plaintiff reiterates, *inter alia*, his claim that he suffered permanent injuries and chronic pain due to the “botched surgery” by Dr. Cross, and complains that plaintiff’s allegations should have been taken as true and plaintiff permitted to provide expert testimony to so demonstrate. However, the magistrate judge explained why plaintiff’s allegations fail to rise to the level of an Eighth Amendment violation. (ECF No. 18 at 9-12.) While the court is not

1 unsympathetic to plaintiff's situation, the court cannot convert what is essentially a state law  
2 malpractice claim into a constitutional violation just because he is a state prisoner. Estelle v.  
3 Gamble, 429 U.S. 97, 106 (1976) ("Medical malpractice does not become a constitutional  
4 violation merely because the victim is a prisoner"); see also McGuckin v. Smith, 974 F.2d 1050,  
5 1059 (9th Cir. 1992) (same), overruled on other grounds, WMX Techs. Inc. v. Miller, 104 F.3d  
6 1133 (9th Cir. 1997) (en banc).<sup>1</sup>

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
8 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the  
9 court finds the findings and recommendations to be supported by the record and by proper  
10 analysis. Plaintiff's action is dismissed without prejudice to enable plaintiff to assert his claims in  
11 state court.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations filed October 5, 2020, are adopted in full;
- 14 2. Plaintiff's second amended complaint (ECF No. 14) is dismissed without prejudice;
- 15 3. Plaintiff's motion for injunctive relief (ECF No. 16) is denied;
- 16 4. Plaintiff's motion to vacate the referral (ECF No. 17) is denied; and
- 17 5. The Clerk of Court is directed to close this case.

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20 DATED: December 7, 2020

/s/ John A. Mendez

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21 THE HONORABLE JOHN A. MENDEZ  
22 UNITED STATES DISTRICT COURT JUDGE

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26 <sup>1</sup> Plaintiff's complaint that the processing of his case was unreasonably delayed is well-taken.  
27 However, it has often been said that "[j]udges in the Eastern District of California carry the  
28 heaviest caseloads in the nation, and this Court is unable to devote inordinate time and resources  
to individual cases and matters." Cortez v. City of Porterville, 5 F. Supp. 3d 1160, 1162 (E.D.  
Cal. 2014).