

1 thereto were to be filed within thirty days.

2 Defendant Dr. Tate filed objections on September 28, 2017. (Doc. No. 44.) Therein
3 defendant Tate argues that the magistrate judge incorrectly concluded that an exam of plaintiff by
4 Dr. Tate occurred on December 19, 2013, and that plaintiff was forced to walk 100 yards to his
5 cell just two days after surgery, when in fact December 19, 2013 was actually four days after
6 plaintiff's surgery. Defendant's objection is immaterial as the fact of whether it was two or four
7 days after plaintiff's surgery, the analysis remains the same. As explained in the magistrate
8 judge's findings and recommendations, based on the conflicting accounts, there is a genuine issue
9 of material fact as to whether Dr. Tate even examined plaintiff on December 19, 2013, and then
10 forced him to walk 100 yards back to his cell in deliberate indifference to his serious medical
11 needs following his surgery on December 15, 2013. The disputed facts do not hinge on whether
12 Dr. Tate's actions took place two days or four days following plaintiff's surgery. Furthermore,
13 although plaintiff's surgery took place on December 15, 2013, he was not discharged from the
14 hospital and returned to the prison until December 17, 2013, just two days prior to the December
15 19, 2013 actions at issue.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
17 *de novo* review of this case. Having carefully reviewed the entire file, including defendants'
18 objections, the court finds the findings and recommendations to be supported by the record and
19 by proper analysis.

20 Accordingly:

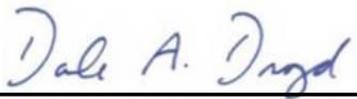
- 21 1. The findings and recommendations issued September 1, 2017 (Doc. No. 42) are
22 adopted in full;
- 23 2. Defendant Dr. Yin's motion for summary judgment (Doc. No. 31) is granted; and
- 24 3. Defendant Dr. Tate's motion for summary judgment (Doc. No. 31) is granted in
25 part and denied in part as follows:
 - 26 a. Granted as to plaintiff's claims for failure to prescribe morphine, failure to
27 examine, delay in surgery, and forged refusal of treatment form on
28 December 18, 2013; and

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b. Denied as to plaintiff's claim of mistreatment during the examination on
December 19, 2013.

IT IS SO ORDERED.

Dated: March 5, 2018


UNITED STATES DISTRICT JUDGE