1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA 8 9 10 AVERILLE WILLIS, CASE NO. 1:15-cv-01572-AWI-MJS (PC) 11 Plaintiff, ORDER ADOPTING FINDINGS AND 12 ٧. RECOMMENDATIONS AND DISMISSING **CERTAIN CLAIMS** 13 NELLYA KANDKHOROVA, 14 (ECF No. 35) Defendant. 15 16 17 Plaintiff is a state prisoner proceeding in forma pauperis and with counsel in this 18 civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a 19 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 20 302. 21 On March 25, 2016, the Court screened Plaintiff's first amended complaint (ECF 22 No. 9) and found it states a cognizable Eighth Amendment claim for damages and 23 injunctive relief against Defendant Kandkhorova. (ECF No. 10.) The remaining claim for 24 declaratory relief was dismissed with prejudice as subsumed within the damages claim. 25 Additionally, Plaintiff's claim for preliminary injunctive relief was denied. 26 On December 8, 2017, the Magistrate Judge re-screened Plaintiff's third amended 27 complaint, recognizing that a recent Ninth Circuit opinion, Williams v. King, 875 F.3d 500

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(9th Cir. 2017), held that a magistrate judge does not have jurisdiction to dismiss claims with prejudice in screening prisoner complaints absent the consent of all parties, even if the plaintiff has consented to magistrate judge jurisdiction, as plaintiff had here. (Doc. No. 35.) Concurrently, the Magistrate Judge issued findings and recommendations recommending that the undersigned dismiss the non-cognizable claims and deny the request for preliminary injunctive relief. (Id.) The parties were given fourteen days to file objections to those findings and recommendations. No objections were filed, and the time in which to do so has now passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the Court has conducted a de novo review of Plaintiff's case. The Court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, it is HEREBY ORDERED that:

- 1. The findings and recommendations issued December 8, 2017 are adopted in full;
- The action shall continue to proceed only on Plaintiff's cognizable Eighth
 Amendment claim for damages and permanent injunctive relief against
 Defendant Kandkhorova; and

SENIOR DISTRICT JUDGE

- 3. All other claims are dismissed with prejudice;
- 4. Plaintiff's request for preliminary injunctive relief is denied.

IT IS SO ORDERED.

22 Dated: February 2, 2018