1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA 8 9 10 OBIE L. CRISP, III, No. 2:14-cv-1839-EFB P 11 Petitioner, 12 ORDER AND FINDINGS AND **RECOMMENDATIONS** 13 CALIFORNIA HEALTH CARE FACILITY, 14 Respondent. 15 16 Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 17 28 U.S.C. § 2254.² The court has reviewed the petition as required by Rule 4 of the Rules 18 19 Governing Section 2254 Proceedings, and finds that it must be summarily dismissed. See Rule 4, 20 Rules Governing § 2254 Cases (requiring summary dismissal of habeas petition if, upon initial 21 review by a judge, it plainly appears "that the petitioner is not entitled to relief in the district 22 court"). The petition alleges that the administrative appeals process at the California Health Care 23 Facility is inadequate. ECF No. 1. 24 ¹ Petitioner did not respond to the court's order directing him to complete and return the 25 form indicating either his consent to jurisdiction of the magistrate judge or request for reassignment to a district judge. Accordingly, the clerk will be directed to randomly assign this 26 case to a district judge. 27 ² Petitioner's application to proceed in forma pauperis (ECF No. 2) is granted. See 28 28 U.S.C. § 1915(a).

Federal courts offer two main avenues to relief on complaints related to one's imprisonment – a petition for habeas corpus pursuant to 28 U.S.C. § 2254, and a civil rights complaint pursuant to 42 U.S.C. § 1983. Challenges to the validity of one's confinement or the duration of one's confinement are properly brought in a habeas action, whereas requests for relief turning on the circumstances of one's confinement are properly brought in a § 1983 action.

Muhammad v. Close, 540 U.S. 749, 750 (2004) (citing Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)); see also 28 U.S.C. § 2254(a) ("[A] district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."); Advisory Committee Notes to Rule 1 of the Rules Governing § 2254 Cases. Here, petitioner's claim does not sound in habeas because it does not concern the validity or duration of his confinement.

Accordingly, IT IS HEREBY ORDERED that petitioner's application to proceed in forma pauperis (ECF No. 2) is granted and the Clerk of the Court shall randomly assign this action to a United States District Judge.

Further, it is HEREBY RECOMMENDED that this action be dismissed without prejudice to filing a civil rights action pursuant to 42 U.S.C. § 1983.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In his objections petitioner may address whether a certificate of appealability should issue in the event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing

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1	Section 2254 Cases (the district court must issue or deny a certificate of appealability when it
2	enters a final order adverse to the applicant).
3	Dated: November 12, 2014.
4	Elmind F. Bilman
5	EĎMUND F. BRĚNNAN UNITED STATES MAGISTRATE JUDGE
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