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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERROL LOVELL UNDERWOOD,
Plaintiff,
v.
R. TAN, et al.,
Defendants.

No. 2:17-CV-0174-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

Defendants moved for summary judgment more than a year ago. ECF No. 26. Since then, the Magistrate Judge granted Mr. Underwood several additional months to oppose that motion. See ECF Nos. 32, 34. He did not file an opposition. The defendants also moved to dismiss the claims against a nurse, Ms. Egipto, whose death was disclosed to Mr. Underwood more than a year ago without any response. See Not. Suggestion of Death, ECF No. 23; Am. Not. Suggestion of Death, ECF No. 30; Mot. Dismiss, ECF No. 35. The Magistrate Judge also granted Mr. Underwood several additional months to oppose the motion to dismiss, but he did not file an opposition. See ECF Nos. 37, 39, 41.

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1 On September 23, 2020, the Magistrate Judge filed findings and recommendations,
2 in which he recommends granting both the motion to dismiss and the motion for summary
3 judgment. The findings and recommendations were served on the parties and contained notice
4 that the parties may file objections within the time specified therein. No objections to the
5 findings and recommendations have been filed, though Mr. Underwood did request leave to
6 substitute the State of California in place of Ms. Egipto, ECF No. 46. The Magistrate Judge
7 denied that motion on the basis of Mr. Underwood’s delays and California’s immunity under the
8 Eleventh Amendment. ECF No. 48.

9 Because no party has objected to the findings and recommendations, the court
10 presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th
11 Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Robbins v.*
12 *Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are
13 reviewed de novo by both the district court and [the appellate] court . . .”). Having reviewed the
14 file, the court finds the findings and recommendations to be supported by the record and by the
15 proper analysis.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The findings and recommendations filed September 23, 2020, are adopted in full;
- 18 2. Defendants’ motion to dismiss Defendant Egipto, ECF No. 35, is granted;
- 19 3. Defendant Egipto is dismissed;
- 20 4. Defendants’ motion for summary judgment, ECF No. 26, is granted; and
- 21 5. The Clerk of the Court is directed to enter judgment and close this file.

22 DATED: November 30, 2020.

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26 CHIEF UNITED STATES DISTRICT JUDGE
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