

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE W. SHUFELT,
Plaintiff,
v.
RAFAEL MIRANDA, et al.,
Defendants.

No. 2:17-cv-1014 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. On January 2, 2018, plaintiff filed an amended complaint. In the spirit of Federal Rule of Civil Procedure 15(a)(1), which generally permits plaintiffs to amend a complaint once as a matter of course in the early stages of the case, the court will grant plaintiff leave to amend and screen plaintiff's amended complaint as the court is required to do under 28 U.S.C. § 1915A(a).

The court has conducted the required screening and finds that the amended complaint states claims upon which plaintiff may proceed under the Eighth Amendment against defendants Griffith, Miranda and Abdur-Rahman for denial or delay of medical treatment.

/////
/////
/////

1 As for the other claims and defendants identified in plaintiff's amended complaint,
2 plaintiff's amended complaint fails to state claims upon which relief can be granted.¹

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion for leave to amend is granted.

5 2. Plaintiff's original complaint is dismissed.

6 3. Service is appropriate for defendants Griffith and Miranda.²

7 4. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons, an
8 instruction sheet and a copy of the amended complaint.

9 5. Within thirty days from the date of this order, plaintiff shall complete the attached
10 Notice of Submission of Documents and submit the following documents to the court:

11 a. The completed Notice of Submission of Documents;

12 b. One completed summons;

13 c. One completed USM-285 form for each defendant listed in number 3 above;

14 and

15 d. Three copies of the endorsed amended complaint.

16 6. Plaintiff need not attempt service on any defendant and need not request waiver of
17 service. Upon receipt of the above-described documents, the court will direct the United States
18 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
19 without payment of costs.

20 7. The Clerk of the Court assign a district court judge to this case.

21 8. Defendant Abdur-Rahman shall file a responsive pleading within 30 days.

22 ////

23 ////

24 _____
25 ¹ With respect to claims asserted under California law, plaintiff has not adequately pled
26 compliance with the terms of the California Tort Claims Act. See Cal. Gov't Code § 910 et seq.;
27 Mangold v. Cal. Pub. Utils. Comm'n, 67 F.3d. 1470, 1477 (9th Cir. 1995). Complaints must
28 present facts demonstrating compliance, rather than simply conclusions suggesting as much.
Shirk v. Vista Unified School Dist., 42 Cal.4th 201, 209 (2007).

² Defendant Abdur-Rahman appeared in this action on February 20, 2018. ECF No. 20.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY RECOMMENDED that:

1. All defendants other than defendants Griffith, Miranda and Abdur-Rahman be dismissed; and
2. All claims other than plaintiff's Eighth Amendment claims against defendants Griffith, Miranda and Abdur-Rahman be dismissed.

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)(1). Within fourteen after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 19, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

1
shuf1014.1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE W. SHUFELT,
Plaintiff,
v.
RAFAEL MIRANDA, et al.,
Defendants.

No. 2:17-cv-1014 CKD P

NOTICE OF SUBMISSION
OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's order
filed _____ :

- _____ completed summons form
- _____ completed USM-285 forms
- _____ copies of the _____
Amended Complaint

DATED:

Plaintiff