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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 WBS CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 19, 2018, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Neither party has filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

In an order issued April 19, 2018, the magistrate judge screened plaintiff’s amended complaint and found that the amended complaint states claims upon which plaintiff may proceed

1 under the Eighth Amendment against defendants Griffith, Miranda and Abdur-Rahman for denial  
2 or delay of medical treatment. Plaintiff objected to the court's screening order asserting, in part,  
3 that he should be permitted to proceed on claims arising under California law as well. In  
4 response to the objections, the magistrate judge dismissed plaintiff's amended complaint with  
5 leave to file a second amended complaint. Plaintiff did not file a second amended complaint  
6 within the allotted time and the magistrate judge now recommends dismissal of this action.

7 Since the magistrate judge found that plaintiff's amended complaint states actionable  
8 claims, the court will decline the recommendation that this action be dismissed for failure to file a  
9 second amended complaint. This action will be remanded to the magistrate judge who should  
10 determine if plaintiff wishes to proceed on his amended complaint pursuant to the terms described  
11 in the magistrate judge's April 19, 2018 order.

12 Accordingly, IT IS HEREBY ORDERED that this action is remanded to the assigned  
13 magistrate judge for proceedings consistent with this order.

14 Dated: February 6, 2019



15 **WILLIAM B. SHUBB**  
16 **UNITED STATES DISTRICT JUDGE**

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