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

ROBERT LEE SIMMS,

Petitioner,

v.

JEFF LYNCH,

Respondent.

No. 2:21-cv-00035-KJM-JDP (HC)

**ORDER** 

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 3, 2021, the magistrate judge filed findings and recommendations, 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 Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court //////

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...."). Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

## Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed September 3, 2021, are adopted in full;
- 2. Respondent's motion to dismiss, ECF No. 12, is granted, and only petitioner's first claim—that the trial court erred when it admitted adverse DNA evidence—is permitted to proceed;
  - 3. Petitioner's remaining three claims are dismissed as unexhausted; and
- 4. This matter is referred back to the assigned magistrate judge for all further pretrial proceedings.

DATED: December 8, 2021.

CHIEF UNITED STATES DISTRICT JUDGI