



1 The parties were sent copies of the R&R and instructed they had 14 days to file written  
2 objections. 28 U.S.C. § 636(b), *see also*, Federal Rule of Criminal Procedure 72 (party objecting  
3 to the recommended disposition has fourteen (14) days to file specific, written objections).  
4 Plaintiff filed an objection on December 15, 2014, and on January 15, 2015, he filed a Notice  
5 to Dismiss, pursuant to Rule 41. Federal Rule of Civil Procedure, Rule 41 provides for voluntary  
6 dismissal by a plaintiff, without a court order if dismissal is sought before the opposing party  
7 serves either an answer or a motion for summary judgment or a stipulation of dismissal is signed  
8 by all parties who have appeared. Then, the notice or stipulation results in dismissal without  
9 prejudice. Here, the Secretary filed a Motion to Dismiss. A review of the Plaintiff's Notice to  
10 Dismiss does not reflect service upon the Defendant. The Court contacted the Defendant and  
11 there is no objection to dismissal of this action, without prejudice.

#### 12 REPORT AND RECOMMENDATION

13 Pursuant to 28 U.S.C. § 636(b), this Court makes a *de novo* determination as to those  
14 portions of the R&R to which there are objections. 28 U.S.C. § 636(b)(1) ("A judge of the court  
15 shall make a de novo determination of those portions of the report or specified proposed findings  
16 and recommendations to which objection is made.") To the extent that no objection has been  
17 made, arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185, 1187 (9<sup>th</sup>  
18 Cir. 1980) (failure to object to Magistrate's report waives right to do so on appeal); *see also*,  
19 Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist. Court*,  
20 501 F.2d 196, 206 (9<sup>th</sup> Cir. 1974) (when no timely objection is filed, the court need only satisfy  
21 itself that there is no clear error on the face of the record in order to accept the recommendation).

22 While there are no objections and review has, therefore, been waived, the Court  
23 nevertheless reviews at a minimum, *de novo*, the Magistrate Judge's conclusions of law.  
24 *Robbins v. Carey*, 481 F.3d 1143, 1147 (9<sup>th</sup> Cir. 2007) (citing *Turner v. Duncan*, 158 F.3d 449,  
25 455 (9<sup>th</sup> Cir. 1998) (conclusions of law by a magistrate judge reviewed *de novo*); *Martinez v.*  
26 *Ylst*, 951 F.2d 1153, 1156 (9<sup>th</sup> Cir. 1991) (failure to object standing alone will not ordinarily  
27 waive question of law, but is a factor in considering the propriety of finding waiver)).  
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1 The Court finds the R&R to be thorough and well-reasoned, without any clear error in law  
2 or fact. See *United States v. Remsing*, 874 F.2d 614, 617-618 (9th Cir. 1989) (*United States v.*  
3 *Remsing*, 874 F.2d 614, 617-618 (9th Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(A) as providing  
4 for district court to reconsider matters delegated to magistrate judge when there is clear error or  
5 recommendation is contrary to law). As a matter of law, the amount Hayes received when he  
6 first got benefits sets the amount he will receive for the rest of his life. And, in order to receive  
7 his SSI disability benefit he was forced to apply for his retirement benefits early at a reduced  
8 amount. (R&R (Doc. 23) at 3-4.) The Court accepts and adopts the R&R as the opinion of the  
9 Court, pursuant to 28 U.S.C. § 636(b)(1). For the reasons stated in the R&R, the Court dismisses  
10 the case, with prejudice, based in the merits of Plaintiff's claim.

11 **Accordingly,**

12 **IT IS ORDERED** that the Report and Recommendation (Doc. 18) is adopted as the  
13 opinion of the Court.

14 **IT IS FURTHER ORDERED** that the Motion to Dismiss (Doc. 22) is GRANTED.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment  
16 accordingly.

17 DATED this 29<sup>th</sup> day of January, 2015.

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David C. Bury  
United States District Judge