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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JASON KIRBY,
Plaintiff

v.

COUNTY OF LOS ANGELES,
SHERIFF LEROY BACA, UNDER
SHERIFF PAUL TANAKA,
CAPTAIN TOM CAREY, DEPUTY
JUAN NAVARRO,
Defendants.

Case No. 2:14-cv-9161-PSG (GJS)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Second Amended Complaint and all pleadings, motions, and other documents filed in this action, the Report and Recommendation of United States Magistrate Judge (“Report”), and Plaintiff’s Objections to the Report (“Objections”). Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a de novo review of those portions of the Report to which objections have been stated.

Plaintiff appends to the Objections a declaration in which he states that he has a mental disability and could not properly care for himself until sometime in 2013. A district court has discretion, but is not required, to consider evidence or arguments presented for the first time in objections to a report and recommendation. *See*

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Brown v. Roe, 279 F.3d 742, 744-45 (9th Cir. 2002); *United States v. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000). The Court has exercised its discretion to consider this evidence, but concludes that this information is already part of the record in this case and does not affect or alter the analysis and conclusions set forth in the Report.

Accordingly, the Court accepts the findings and recommendations set forth in the Report. **IT IS ORDERED** that:

- (1) Defendants’ Motion to Dismiss the Second Amended Complaint [Dkt. 71] is GRANTED and Plaintiff’s claims against Defendants Baca, Tanaka, and Carey, are dismissed from this case with prejudice;
- (2) Plaintiff’s Motion for Leave to Amend [Dkt. 78] is DENIED.

IT IS SO ORDERED.

DATE: 5/4/17



PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE