FILED

2009 SEP 15 AM 10: 58

CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BA DEBALLA

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

JACIE LEE GOUDLOCK, JR.,

Plaintiff.

VS.

THOMPSON, Correctional Officer; CRUZ, Correctional Sergeant; and L. PETERSEN, Registered Nurse,

Defendants.

CASE NO. 08cv0204 BEN (RBB)

ORDER ADOPTING REPORT AND RECOMMENDATION GRANTING DEFENDANT PETERSEN'S MOTION TO DISMISS

[Doc. Nos. 23, 33]

This matter is before the Court upon the Magistrate Judge's Report and Recommendation. (Doc. No. 33). For the reasons that follow, the Court **ADOPTS** the Report and Recommendation and **GRANTS** Defendant Petersen's Motion to Dismiss. (Doc. No. 23.)

Plaintiff, a state prisoner, filed an Amended Complaint against several prison staff members for violations of civil rights under 42 U.S.C. § 1983. Defendant Petersen moved to dismiss because of Plaintiff's failure to exhaust his administrative remedies as to her. The Honorable Magistrate Judge Ruben B. Brooks issued a Report and Recommendation recommending the Motion to Dismiss be granted. No objection has been filed.

Title 28 U.S.C. § 636(b)(1)(C) provides: "A judge of the [district] court shall make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made." Thus, the governing statute "makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo *if objection* 

is made, but not otherwise." United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) ("Neither the Constitution nor the statute requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct.").

The Court ADOPTS the Report and Recommendation in its entirety and GRANTS Defendant Petersen's Motion to Dismiss Plaintiff's claim for damages against her WITHOUT LEAVE TO AMEND. Count two of the Amended Complaint is DISMISSED WITHOUT LEAVE TO AMEND.

United States District Judge

IT IS SO ORDERED.

Dated:

- 2 -