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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DANIEL J. LANG,

vs.

CANLAS, DOCTOR; ESCALANTE,
CORRECTIONAL OFFICER (C/O);
ALLAMBY, LIEUTENANT; WHITEHEAD,
R.N.; M. RUIZ, DOCTOR; SINAGA,
REGISTERED NURSE,

Defendants.

CASE NO. 08-CV-238-JLS (CAB)

**ORDER: (1) ADOPTING REPORT
AND RECOMMENDATION AND
(2) GRANTING DEFENDANTS'
MOTION TO DISMISS**

(Doc. Nos. 49 & 55)

Presently before the Court is Magistrate Judge Cathy Ann Bencivengo’s Report and Recommendation (“R&R”) advising this Court to grant Defendants’ motion to dismiss. (Doc. No. 55.) Plaintiff did not timely file objections.

Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set forth the duties of a district court in connection with a magistrate judge’s report and recommendation. “The district court must make a *de novo* determination of those portions of the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. 636(b)(1)(c); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989); *United States v. Raddatz*, 447 U.S. 667, 676 (1980). However, in the absence of timely objection, the Court need “only satisfy itself that there is no clear error on the face of the

1 record.” Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (citing *Campbell v. U.S. Dist. Court*,
2 501 F.2d 196, 206 (9th Cir. 1974)).

3 Since Plaintiff failed to timely object to Magistrate Judge Bencivengo’s R&R, the Court need
4 only ensure that it is not clearly erroneous given the record. Having done so, the Court finds Judge
5 Bencivengo’s opinion is thorough, well reasoned, and no contains no clear error. Therefore, the Court
6 **ADOPTS** the R&R in full. The Court therefore **GRANTS** Defendants’ motion to dismiss as follows:

7 1) the Eighth Amendment deliverate indifference claims in Cout One (and Count Two in
8 the Form Complaint) against Defendants Canlas, Whitehead, and Escalante are
9 **DISMISSED WITH PREJUDICE;**

10 2) the negligence claim (and all other state law claims) in Cout One (and Count Towo in
11 the Form Complaint) against Defendants Canlas, Whitehead, and Escalante are
12 **DISMISSED WITHOUT PREJUDICE;**

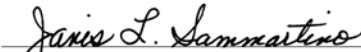
13 3) the claim for excessive force/First Amendment (and related federal and state law
14 claims) in Count Three against defendants Escalante and Allamby are **DISMISSED**
15 **WITHOUT PREJUDICE;**

16 4) the claim for retaliation (and related federal and state law claims) in Count Four
17 against defendants Sinaga and Ruiz are **DISMISSED WITHOUT PREJUDICE.**

18 Since all claims in the Second Amended Complaint have now been dismissed, the Clerk shall close
19 the file.

20 IT IS SO ORDERED.

21
22 DATED: August 5, 2010

23 
24 Honorable Janis L. Sammartino
25 United States District Judge
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