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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THEODORE E. NEWBERRY,	)	Civil No. 08cv552 L (PCL)
	)	
Plaintiff,	)	<b>ORDER ADOPTING REPORT AND</b>
	)	<b>RECOMMENDATION; GRANTING</b>
v.	)	<b>WITHOUT PREJUDICE MOTION</b>
	)	<b>TO DISMISS [doc. #9]; and</b>
N. BARRERAS, M.D., <i>et al.</i> ,	)	<b>GRANTING LEAVE TO AMEND</b>
	)	<b>THE COMPLAINT</b>
Defendants.	)	
	)	
_____	)	

Plaintiff Theodore E. Newberry filed a *pro se* complaint under 42 U.S.C. § 1983 that alleged defendants violated his constitutional right under the Eighth Amendment to be free from cruel and unusual punishment for deliberately ignoring plaintiff’s medical needs and pain. The matter was referred to United States Magistrate Judge Peter C. Lewis, for a Report and Recommendation ("Report"). *See* 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.3. The magistrate judge issued a Report recommending the motion be granted and requiring objections, if any, to the Report to be filed no later than December 29, 2008. [doc. #17] To date, no objections have been filed.

A district judge "may accept, reject, or modify the recommended decision" on a dispositive matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes. FED. R. CIV. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of those portions of the [report and recommendation] to which objection is

1 made." 28 U.S.C. § 636(b)(1). Section 636(b)(1) does not require some lesser review by the  
2 district court when no objections are filed. *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). The  
3 "statute makes it clear that the district judge must review the magistrate judge's findings and  
4 recommendations de novo *if objection is made, but not otherwise.*" *United States v. Reyna-*  
5 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in the original); *see Schmidt v.*  
6 *Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003) (applying *Reyna-Tapia* to  
7 habeas review).

8 Having reviewed the Report and no objections having been filed, defendants' motion to  
9 dismiss without prejudice is **GRANTED**. Plaintiff may file an amended complaint that  
10 complies with the issues raised in the Report. If plaintiff intends to prosecute this action, the  
11 amended complaint shall be filed and served on opposing counsel no later than February 6,  
12 2009.

13 **IT IS SO ORDERED.**

14 DATED: January 9, 2009

15   
16 M. James Lorenz  
United States District Court Judge

17 COPY TO:

18 HON. PETER C. LEWIS  
19 UNITED STATES MAGISTRATE JUDGE

20 ALL PARTIES/COUNSEL  
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