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

JAIME PINEDA,

Plaintiff,

vs.

SILVIA G. GARCIA, Warden R.J.D.;
JODIE RIVERA, Health Care Appeal
Coordinator; LARRY LYLE, M.D.,
H.C.M.; JAYA SUNDARA, DR. R.J.D.;
LAMING, R.N. R.J.D.,

Defendants.

CASE NO. 08cv1655 WQH (AJB)

ORDER

Hayes, Judge:

The matters before the Court are (1) the Motion to Dismiss (Doc. # 5), and (2) the Report and Recommendation (Doc. # 8).

Background

On September 5, 2008, Plaintiff Jaime Pineda, a state prisoner proceeding pro se, filed the Complaint under 42 U.S.C. § 1983 (Doc. # 1). The Complaint alleges that Defendants violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment by failing to properly treat his medical needs. On December 23, 2008, Defendants filed the Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff has not filed any opposition to the Motion to Dismiss. On March 19, 2009, Magistrate Judge Anthony J. Battaglia filed the Report and Recommendation recommending that this Court dismiss the Complaint. The Magistrate Judge concluded that Plaintiff has failed to state a

1 claim against any Defendant because the Complaint fails to allege facts to show how each
2 Defendant acted with deliberate indifference to Plaintiff's serious medical needs. The Report
3 and Recommendation stated that any party may file written objections to the Report and
4 Recommendation by April 17, 2009. Neither party has filed objections to the Report and
5 Recommendation.

6 **Standard of Review**


7 The duties of the district court in connection with the Report and Recommendation of
8 a Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28
9 U.S.C § 636(b). The district judge "must make a de novo determination of those portions of
10 the report . . . to which objection is made," and "may accept, reject, or modify, in whole or in
11 part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b). The
12 district court need not review *de novo* those portions of a Report and Recommendation to
13 which neither party objects. *Wang v. Masaitis*, 416 F.3d 992, 100 n. 13 (9th Cir. 2005); *United*
14 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).

15 **Ruling of the Court**

16 Neither party has filed objections to the Report and Recommendation. The Court has
17 reviewed the Report and Recommendation, and concludes that the Magistrate Judge correctly
18 determined that the Complaint failed to state a claim for violation of Plaintiff's Eighth
19 Amendment rights because the Complaint failed to allege facts to support that Defendants
20 acted with deliberate indifference to Plaintiff's serious medical needs.

21 IT IS HEREBY ORDERED that all portions of the Report and Recommendation (Doc.
22 # 8) are **ADOPTED**, and that the Motion to Dismiss (Doc. # 5) is **GRANTED**. The above-
23 captioned action is **DISMISSED**.

24 DATED: May 4, 2009

25 
26 **WILLIAM Q. HAYES**
27 United States District Judge
28