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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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

THOMAS A. MOORE,

Plaintiff,

v.

DEBRA LACY, et al.,

Defendants.

CASE NO. 09cv767 BEN (RBB)
**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Defendants filed a motion to dismiss Plaintiff's First Amended Complaint on July 27, 2010. (Dkt. No. 30.) Plaintiff did not oppose the motion. On December 17, 2010, the Honorable Magistrate Judge Ruben B. Brooks issued a Report and Recommendation, recommending that the Court grant Defendants' motion to dismiss. (Dkt. No. 38.) Any objections to the Report and Recommendation were due January 14, 2011. (*Id.*) No objections have been filed. For the reasons stated below, the Court **ADOPTS** the well-reasoned Report and Recommendation of the Magistrate Judge and **GRANTS** Defendants' motion to dismiss.

A "district judge may accept, reject, or modify the recommended disposition" of a Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3). "The district judge must determine de novo any part of the [report and recommendation] that has been properly objected to." *Id.* However, "[t]he 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), cert

1 *denied*, 540 U.S. 900 (2003) (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992,
2 1000 n.13 (9th Cir. 2005) (“Of course, de novo review of a R & R is only required when an
3 objection is made to the R & R”). “Neither the Constitution nor the statute requires a district
4 judge to review, de novo, findings and recommendations that the parties themselves accept as
5 correct.” *Reyna-Tapia*, 328 F.3d at 1121.

6 In the absence of any objections, the Court **ADOPTS** the Report and Recommendation
7 in its entirety and **GRANTS** Defendants’ motion to dismiss. The First Amended Complaint
8 is **DISMISSED** without prejudice.

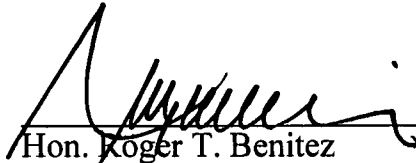
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10 **IT IS SO ORDERED.**

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12 DATED: January 25, 2011

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Hon. Roger T. Benitez
United States District Court

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