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

ANTHONY WAYNE JOHNSON,

Plaintiff,

vs.

M. GAINS, et al.,

Defendants.

CASE NO. 09cv1312-LAB (POR)

**ORDER ADOPTING REPORT
AND RECOMMENDATION;**

**ORDER DISMISSING CLAIMS;
AND**

**ORDER RE: MOTION FOR
LEAVE TO FILE FOURTH
AMENDED COMPLAINT**

Plaintiff Anthony Wayne Johnson, an inmate proceeding *in forma pauperis*, filed his original complaint on June 8, 2009, seeking relief based on alleged harassment and mistreatment in prison pursuant to 42 U.S.C. § 1983.

All dispositive matters were referred to Magistrate Judge Louisa Porter for report and recommendation pursuant to 28 U.S.C. § 636. After Johnson amended his complaint twice, Defendants moved to dismiss. On January 26, 2011, Judge Porter issued her report and recommendation (the "R&R"). Objections to the R&R were due February 24, 2011. On February 7, Johnson filed a pleading which he identified as his objections to the R&R. Defendants filed no objections. The R&R recommended granting the motion in part and dismissing it in part, leaving four claims pending: an Eighth Amendment excessive force claim, a First Amendment retaliation claim, and a Fourth Amendment unreasonable search

1 and seizure claim against Defendant Garcia; and Eighth Amendment excessive force claims
2 against Defendants Carpio, Garza, Rascon, Palomera, and Smith.

3 **I. Motion to Dismiss**

4 A district court has jurisdiction to review a Magistrate Judge's report and
5 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must
6 determine de novo any part of the magistrate judge's disposition that has been properly
7 objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part, the
8 findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The
9 Court reviews de novo those portions of the R&R to which specific written objection is made.
10 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). "The statute
11 makes it clear that the district judge must review the magistrate judge's findings and
12 recommendations de novo *if objection is made*, but not otherwise." *Id.* When no objections
13 are filed, the District Court need not review *de novo* the Report and Recommendation. *Wang*
14 *v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005).

15 Here, Johnson's "objections" consist of two pages of text, first requesting that each
16 of the R&R's recommendations not be adopted, and then arguing in completely general
17 terms that the R&R is wrong. The second part of the "objections" asks the Court to review
18 the motion to dismiss and Johnson's opposition to it.

19 Under Fed. R. Civ. P. 72(b)(2), a party may file "specific written objections" to a report
20 and recommendation. Objections to a report in its entirety do not satisfy this requirement.
21 *DiPilato v. 7-Eleven, Inc.*, 662 F. Supp. 3d 333 (S.D.N.Y. 2009). As the Sixth Circuit has
22 pointed out,

23 [a] general objection to the entirety of the magistrate's report has the same
24 effect as would a failure to object. The district court's attention is not focused
25 on any specific issues for review, thereby making the initial reference to the
magistrate useless.

26 *Howard v. Sec. of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991).

27 The Court is therefore not required to, and does not, review the entire R&R *de novo*.
28 Johnson's generalized objections are **OVERRULED** and the R&R is **ADOPTED**.

1 **II. Motion for Leave to File Fourth Amended Complaint**

2 Johnson on February 18, 2011 filed a motion for leave to file a fourth amended
3 complaint ("FAC"), attaching the proposed complaint as an exhibit. Because denial of leave
4 to amend could prove dispositive, this motion is **REFERRED** to Magistrate Judge Porter for
5 a report and recommendation.

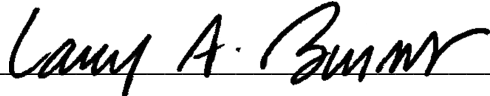
6 **III. Conclusion and Order**

7 For reasons set forth in the R&R, the Court rules as follows:

- 8 1. Defendants' Motion to Dismiss Plaintiff's claims against Defendant Garcia
9 for misjoinder is **DENIED**.
- 10 2. Defendants' Motion to Dismiss Plaintiff's Eighth Amendment excessive
11 force claims against Defendants Gains, Holmstrom and Beltran is **GRANTED**
12 without prejudice.
- 13 3. Defendants' Motion to Dismiss Plaintiff's claims against Defendant Cate
14 is **GRANTED** without prejudice.
- 15 4. Defendants' Motion to Dismiss Plaintiff's state law claims against
16 Defendants Gains, Holmstrom, Beltran, Carpio, Smith, Garza, Rascon,
17 Palomera and Garcia is **GRANTED** with prejudice.
- 18 5. Defendants' Motion to Dismiss Plaintiff's request for injunctive relief is
19 **GRANTED** without prejudice.
- 20 6. Defendants' Motion to Dismiss Plaintiff's claims against Defendants Gains,
21 Holmstrom, Beltran, Carpio, Garza, Rascon, Palomera, Smith and Cate in
22 their official capacities is **GRANTED** with prejudice.

23 **IT IS SO ORDERED.**

24 DATED: February 24, 2011

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26 _____
27 **HONORABLE LARRY ALAN BURNS**
28 United States District Judge