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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**
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9 LESLIE JOHNSON,
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12 vs.
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15 SILVA, et al.,
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17 Defendants.
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CASE NO. 09-CV-1568 BEN (POR)

ORDER:

(1) ADOPTING REPORT AND RECOMMENDATION

(2) DENYING DEFENDANTS' MOTION TO STRIKE PORTIONS OF THE FIRST AMENDED COMPLAINT

(3) GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

[Docket Nos. 38, 50]

19 Plaintiff Leslie Johnson, a state prisoner proceeding *pro se*, filed a First Amended Complaint
20 on December 1, 2010, pursuant to 42 U.S.C. § 1983. (Docket No. 34.) Defendants filed a Motion to
21 Dismiss the First Amended Complaint and/or Strike Portions Thereof on January 14, 2011. (Docket
22 No. 38.) Plaintiff filed an opposition (Docket No. 48), and Defendants filed a reply (Docket No. 49).

23 Magistrate Judge Louisa S. Porter issued a thoughtful and thorough Report and
24 Recommendation recommending that (1) Defendants' Motion to Strike be denied, and (2)
25 Defendants' Motion to Dismiss be granted in part and denied in part. (Docket No. 50.) Any
26 objections to the Report and Recommendation were due August 5, 2011. None of the parties
27 filed any objections. For the reasons that follow, the Report and Recommendation is
28 **ADOPTED.**

1 A district judge “may accept, reject, or modify the recommended disposition” of a
2 magistrate judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.
3 § 636(b)(1). “[T]he district judge must determine de novo any part of the [report and
4 recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3). However,
5 “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings
6 and recommendations de novo *if objection is made*, but not otherwise.” *United States v.*
7 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original), *cert*
8 *denied*, 540 U.S. 900 (2003); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.
9 2005). “Neither the Constitution nor the statute requires a district judge to review, de novo,
10 findings and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*,
11 328 F.3d at 1121. Accordingly, the Court may deny the Motion to Strike as well as grant in
12 part and deny in part the Motion to Dismiss on this basis alone.

13 In the absence of any objections, the Court fully **ADOPTS** Judge Porter’s Report and
14 Recommendation. Defendants’ Motion to Strike Plaintiff’s first, second, fourth, and sixth
15 causes of action is **DENIED**. Defendants’ Motion to Dismiss Plaintiff’s Eighth Amendment
16 claim of deliberate indifference to his medical needs is **GRANTED** with leave to amend
17 against Defendants Liptscher and Espinoza, and **DENIED** as to Defendants Akbari and Silva.
18 Defendants’ Motion to Dismiss Plaintiff’s conspiracy claim is **GRANTED** with leave to
19 amend. Defendants’ Motion to Dismiss Plaintiff’s breach of contract claim is **GRANTED**
20 with prejudice. Defendants’ Motion to Dismiss Plaintiff’s intentional infliction of emotional
21 distress claim is **GRANTED** with leave to amend. Defendants’ Motion to Dismiss Plaintiff’s
22 negligence claim is **DENIED**. Plaintiff is **GRANTED** forty-five (45) days from the date of this
23 Order to file a Second Amended Complaint.

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25 **IT IS SO ORDERED.**

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27 DATED: August 8, 2011

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HON. ROGER T. BENITEZ
United States District Court Judge