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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JESUS SILVA,

Plaintiff,

v.

NASARIA P. BARRERAS, et al.,

Defendants.

CASE NO. 09-CV-2193 W (BGS)

**ORDER (1) ADOPTING REPORT  
AND RECOMMENDATION  
(DOC. 34), (2) GRANTING  
MOTION TO DISMISS (DOC.  
32), AND (3) DENYING  
CERTIFICATE OF  
APPEALABILITY**

On March 8, 2010, Plaintiff Jesus Silva, a state prisoner proceeding pro se, filed his First Amended Complaint ("FAC") in this lawsuit brought under 42 U.S.C. § 1983. Plaintiff alleges that Defendants deprived him of his Eighth Amendment right to be free from cruel and unusual punishment, were deliberately indifferent to his medical needs, and were negligent under state tort law. On September 6, 2011, Defendants filed a motion to dismiss the FAC. (See Doc. 32.) Plaintiff did not oppose the motion.

On February 17, 2012, Magistrate Judge Bernard G. Skomal issued a Report and Recommendation ("Report"), recommending that the Court grant the motion to dismiss. (See Doc. 34.) The Report also ordered that any objections were to be filed no later than 17 days after receiving a copy of the Report, and any Reply within 10 days of being served with the objections. Based on these deadlines, any objection was due

1 on or before March 5, 2012. To date, no objection has been filed, nor has there been  
2 a request for additional time in which to file an objection.

3 A district court's duties concerning a magistrate judge's report and  
4 recommendation and a respondent's objections thereto are set forth in Rule 8(b) of the  
5 Rules Governing Section 2254 Cases in the United States District Courts. See Mayle  
6 v. Felix, 545 U.S. 644, 654 (2005) (Acknowledging that a "discrete set of Rules governs  
7 federal habeas proceedings launched by state prisoners.") Rule 8(b) provides that a  
8 district judge "must determine de novo any proposed finding or recommendation to  
9 which objection is made." In United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th  
10 Cir. 2003), the Ninth Circuit interpreted identical language in 28 U.S.C. 636(b)(1)(c)  
11 as making clear that "the district judge must review the magistrate judge's findings and  
12 recommendations de novo *if objection is made*, but not otherwise." (emphasis in  
13 original); see also Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005) ("Of  
14 course, de novo review of a R & R is *only* required when an objection is made to the  
15 R & R.") (emphasis added) (citing Renya-Tapia, 328 F.3d 1121); Nelson v. Giurbino,  
16 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopted Report without review  
17 because neither party filed objections to the Report despite the opportunity to do so,  
18 "accordingly, the Court will adopt the Report and Recommendation in its entirety.");  
19 see also Nichols v. Logan, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

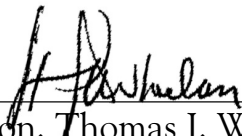
20 The Court recognizes that other district courts within the Ninth Circuit,  
21 including this Court, have previously held that de novo review of the magistrate judge's  
22 findings of law is required even where the prisoner does not object. See Johnson v.  
23 Nelson, 142 F.Supp.2d 1215, 1217 (S.D.Cal. 2001); Avratin v. Bermudez, 420 F.  
24 Supp.2d 1121, 1122-23 (S.D.Cal. 2006); Cordeiro v. Hernandez, 2010 WL 364193  
25 (S.D.Cal. 2010). These cases, however, are all rooted in the Ninth Circuit's decision  
26 in Britt v. Simi Valley Unified school District, 708 F.2d 452 (9th Cir. 1983). The Court  
27 finds that reliance on Britt, however, is no longer appropriate given the Ninth Circuit's  
28 more recent en banc decision in Renya-Tapia. See Schmidt v. Johnstone, 263 F. Supp.

1 2d 1219, 1226 (D. Arizona 2003) (concluding that Renya-Tapia overruled Britt's  
2 requirement that district court's review findings of law even where no objections are  
3 filed.)

4 The Court, therefore, accepts Judge Skomal's recommendation, and **ADOPTS**  
5 the Report (Doc. 34) in its entirety. For the reasons stated in the Report, which is  
6 incorporated herein by reference, the Court **GRANTS** the motion to dismiss (Doc. 32)  
7 and **ORDERS** this matter **DISMISSED**. The Court also **DENIES** a **CERTIFICATE**  
8 **OF APPEALABILITY**.

9 **IT IS SO ORDERED.**

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11 DATED: April 2, 2012

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15 Hon. Thomas J. Whelan  
16 United States District Judge  
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