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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID J. COTA, CDCR # C-26012,
Plaintiff,
vs.
L.E. SCRIBNER, et al.,
Defendants.

CASE NO. 09cv2507 BEN (BLM)
**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Plaintiff David J. Cota, a state prisoner proceeding pro se brought this action pursuant to 42 U.S.C. § 1983. (Dkt. No. 1.) On March 5, 2010, Defendants filed a motion to dismiss Plaintiff's Complaint. (Dkt. No. 20.) Plaintiff opposed the motion. (Dkt. No. 34.)

On November 10, 2010, the Honorable Magistrate Judge Barbara L. Major issued a Report and Recommendation, recommending that the Court grant in part and deny in part Defendants' motion to dismiss. (Dkt. No. 35.) Any objections to the Report and Recommendation were due December 1, 2010. *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 in part and DENIES in part** Defendants' motion to dismiss.

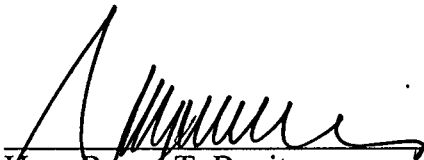
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1 A "district judge may accept, reject, or modify the recommended disposition" of a
2 Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3). "The district judge must
3 determine de novo any part of the [report and recommendation] that has been properly objected
4 to." FED. R. CIV. P. 72(b)(3). However, "[t]he statute makes it clear that the district judge
5 must review the magistrate judge's findings and recommendations de novo *if objection is*
6 *made, but not otherwise.*" *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)
7 (en banc), *cert denied*, 540 U.S. 900 (2003) (emphasis in original); *see also Wang v. Masaitis*,
8 416 F.3d 992, 1000 n.13 (9th Cir. 2005) ("Of course, de novo review of a R & R is only
9 required when an objection is made to the R & R"). "Neither the Constitution nor the statute
10 requires a district judge to review, de novo, findings and recommendations that the parties
11 themselves accept as correct." *Reyna-Tapia*, 328 F.3d at 1121.

12 In the absence of any objections, the Court **ADOPTS** the Report and Recommendation
13 in its entirety and **GRANTS in part and DENIES in part** Defendants' motion to dismiss.

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15 **IT IS SO ORDERED.**

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17 DATED: December *07*, 2010



Hon. Roger T. Benitez
United States District Court

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