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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 PHILLIP CHARLES SNEED,

12 Plaintiff,

13 v.

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15 C. LIRA, et al.,

16 Defendants.

CASE NO. 09-CV-2853 W (MDD)

**ORDER (1) ADOPTING REPORT  
AND RECOMMENDATION  
[DOC. 81], (2) GRANTING  
SUMMARY JUDGMENT [DOC.  
58] AND (3) DISMISSING THIS  
CASE**

17 On December 17, 2009, Plaintiff Phillip Charles Sneed, proceeding pro se, filed  
18 this civil rights action under 42 U.S.C. § 1983. Plaintiff alleges that Correctional  
19 Officer Defendants violated California law and his Eighth Amendment right to be free  
20 from cruel and unusual punishment when one of the Defendants allegedly attacked  
21 Plaintiff while the other Defendant looked on.

22 On June 1, 2011, Defendants filed the pending summary-judgment motion.  
23 [Doc. 81.] On June 2, 2011, a notice was sent to Plaintiff under Klinge v. Eikenberry,  
24 849 F.2d 409 (9th Cir. 1988) (en banc), advising him of the requirements for opposing  
25 Defendants' motion. [Doc. 59.] The notice specifically advised Plaintiff that in  
26 opposing the motion, he could not "simply rely on what your complaint says" and that  
27 he "must set out specific facts in declarations, depositions, answers to interrogatories,  
28 or authenticated documents . . . that contradict the facts shown in" Defendants'

1 evidence supporting their motion. [See Doc. 59 at 1:27–2:3.]

2 On June 20, 2011, Plaintiff filed an opposition to the motion. [Doc. 63.] The  
3 opposition only addressed outstanding discovery issues. [See Id.] Accordingly, with the  
4 close of discovery and resolution of the discovery issues, on September 28, 2011,  
5 Magistrate Judge Mitchell D. Dembin issued an order granting Plaintiff leave to file an  
6 amended opposition. [Doc. 73.] The order reminded Plaintiff of the Klinge/Rand  
7 notice he previously received. [*Id.* at 2:14–15.] Plaintiff did not file an amended  
8 opposition.

9 On November 3, 2011, Magistrate Judge Dembin issued a Report and  
10 Recommendation (“Report”), recommending that the Court grant the summary-  
11 judgment motion. The Report also ordered that any objections were to be filed by  
12 November 28, 2011, and any reply filed by December 12, 2011. To date, no objection  
13 has been filed, nor has there been a request for additional time in which to file an  
14 objection.

15 A district court’s duties concerning a magistrate judge’s report and  
16 recommendation and a respondent’s objections thereto are set forth in Rule 8(b) of the  
17 Rules Governing Section 2254 Cases in the United States District Courts. See Mayle  
18 v. Felix, 545 U.S. 644, 654 (2005) (Acknowledging that a “discrete set of Rules governs  
19 federal habeas proceedings launched by state prisoners.”) Rule 8(b) provides that a  
20 district judge “must determine de novo any proposed finding or recommendation to  
21 which objection is made.” In United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th  
22 Cir. 2003), the Ninth Circuit interpreted identical language in 28 U.S.C. 636(b)(1)(c)  
23 as making clear that “the district judge must review the magistrate judge’s findings and  
24 recommendations de novo *if objection is made*, but not otherwise.” (emphasis in  
25 original); see also Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005) (“Of  
26 course, de novo review of a R & R is *only* required when an objection is made to the R  
27 & R.”) (emphasis added) (citing Reyna-Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395  
28 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (adopted Report without review because neither

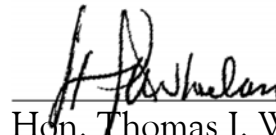
1 party filed objections to the Report despite the opportunity to do so, “accordingly, the  
2 Court will adopt the Report and Recommendation in its entirety.”); see also Nichols v.  
3 Logan, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (same).

4 The Court recognizes that other district courts within the Ninth Circuit have  
5 previously held that de novo review of the magistrate judge’s findings of law is required  
6 even where the prisoner does not object. See Johnson v. Nelson, 142 F.Supp.2d 1215,  
7 1217 (S.D.Cal. 2001); Avratin v. Bermudez, 420 F. Supp.2d 1121, 1122-23 (S.D.Cal.  
8 2006); Cordeiro v. Hernandez, 2010 WL 364193 (S.D.Cal. 2010). These cases,  
9 however, are all rooted in the Ninth Circuit’s decision in Britt v. Simi Valley Unified  
10 School District, 708 F.2d 452 (9th Cir. 1983). The Court finds that reliance on Britt  
11 is no longer appropriate given the Ninth Circuit’s more recent en banc decision in  
12 Renya-Tapia. See Schmidt v. Johnstone, 263 F. Supp. 2d 1219, 1226 (D. Arizona  
13 2003) (concluding that Renya-Tapia overruled Britt’s requirement that district court’s  
14 review findings of law even where no objections is filed).

15 Accordingly, because Plaintiff has not filed an objection, the Court accepts Judge  
16 Dembin’s recommendation, and **ADOPTS** the Report [Doc. 81] in its entirety. For the  
17 reasons stated in the Report, which is incorporated herein by reference, the Court  
18 **GRANTS** Defendants’ summary-judgment motion [Doc. 58] and **ORDERS** this case  
19 **DISMISSED**.

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21 **IT IS SO ORDERED.**

22 DATED: January 11, 2012

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24   
25 Hon. Thomas J. Whelan  
26 United States District Judge  
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