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

MICHAEL J. BOOTH,

Plaintiff,

vs.

GEORGE NEOTTI, Warden; JOHN
DOE, Supervisor and Correctional
Officer; R. BOLDING, Correctional
Officer; T. ARMSTEAD, Correctional
Officer,

Defendants.

CASE NO. 10cv1236-WQH-NLS

ORDER

HAYES, Judge:

The matter before the Court is the Motion for Leave to File Amended Complaint filed by Plaintiff Michael Booth (ECF No. 35) and the Report and Recommendation issued by Magistrate Judge Nita L. Stormes recommending that the motion be granted (ECF No. 44).

BACKGROUND

On June 10, 2010, Plaintiff initiated this action by filing a Complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1). On October 15, 2010, Plaintiff filed a First Amended Complaint (“Complaint”). (ECF No. 2). The Complaint relates to treatment Plaintiff alleges to have received while incarcerated at R. J. Donovan Correctional Facility in San Diego, California.

On February 17, 2012, Plaintiff filed a motion for leave to file an amended complaint, “in order to name proper defendants who were not named in the [Complaint], dismiss incorrectly named defendants from the litigation, dismiss the alleged intentional infliction of

1 emotional distress claims, and add the claim of negligent infliction of emotional distress
2 against all defendants.” (ECF No. 35-1 at 1). Defendants have not filed any opposition.

3 On March 26, 2012, the Magistrate Judge issued a Report and Recommendation
4 recommending that the motion for leave to file an amended complaint be granted. (ECF No.
5 44). The Magistrate Judge ordered that “[a]ny party may file written objections with the Court
6 and serve a copy on all parties on or before April 9, 2012.... Any response to the objections
7 shall be filed and served on or before April 16, 2012.” (ECF No. 44 at 3). To date, no
8 objections have been filed by any party.

9 REVIEW OF THE REPORT AND RECOMMENDATION

10 The duties of the district court in connection with a report and recommendation of a
11 magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b).
12 The district judge must “make a de novo determination of those portions of the report ... to
13 which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings
14 or recommendations made by the magistrate.” 28 U.S.C. § 636(b). The district court need not
15 review de novo those portions of a report and recommendation to which neither party objects.
16 *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d
17 1114, 1121-22 (9th Cir. 2003) (en banc).

18 The Court has reviewed *de novo* the record and submissions in this case. The
19 Magistrate Judge correctly stated that “[l]eave to amend should be freely given ‘when justice
20 so requires.’” (ECF No. 44 at 2). The Magistrate Judge correctly stated that “Five factors are
21 taken into account to assess the propriety of a motion for leave to amend: bad faith, undue
22 delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has
23 previously amended the complaint.” *Id.* The Magistrate Judge correctly found that there was
24 no bad faith, undue delay, prejudice to parties, or futility in Plaintiff’s motion for leave to
25 amend the Complaint. The Magistrate Judge correctly concluded that “Plaintiff should be
26 granted leave to amend, as justice so requires.” *Id.*

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CONCLUSION

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 44) is ADOPTED in its entirety. The Motion for Leave to File Amended Complaint filed by Plaintiff Michael Booth (ECF No. 35) is GRANTED. Plaintiff shall file the Second Amended Complaint attached to his motion (ECF No. 35-3) within ten days of the date of this order.

DATED: April 16, 2012


WILLIAM Q. HAYES
United States District Judge