UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE A BORJA, CDCR #T-54311,

Plaintiff,

vs.

F. GONZALEZ; J. GONZALEZ; M. ALVAREZ; C. NEAL; DELEAT,

Defendants.

CASE NO. 10cv1379 BEN (WMc)

ORDER ADOPTING REPORT AND RECOMMENDATION

Defendants filed a motion to dismiss Plaintiff Jose Borja's Fourteenth Amendment Equal Protection claim on February 24, 2011. (Dkt. No. 23.) After two extensions of time to file an opposition, Plaintiff filed an Opposition on May 12, 2011. (Dkt. No. 29.) On May 17, 2011, the Honorable Magistrate Judge William McCurine, Jr. issued a Report and Recommendation, recommending that the Court grant Defendants' motion to dismiss. (Dkt. No. 30.) Any objections to the Report and Recommendation were due June 8, 2011. (*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** Defendants' motion to dismiss.

A district judge "may accept, reject, or modify the recommended disposition" of a Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. §636(b)(1). "[T]he district judge must determine de novo any part of the [report and

recommendation] that has been properly objected to." FED. R. CIV. P. 72(b)(3). However, "[t]he statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original), *cert denied*, 540 U.S. 900 (2003); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). "Neither the Constitution nor the statute requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct." *Reyna-Tapia*, 328 F.3d at 1121. Accordingly, the Court may grant Defendants' motion to dismiss on this basis alone.

The Court has, however, reviewed the matter de novo and agrees that the motion to dismiss should be granted because Plaintiff has failed to state a claim for denial of equal protection. He fails to allege facts demonstrating he is a member of a protected class or that his membership in that class led to his treatment.

In the absence of any objections and after a de novo review, the Court fully **ADOPTS** Judge McCurine's Report and **DISMISSES** Plaintiff's Fourteenth Amendment Equal Protection Claim.

DATED: July 1, 2011

Hon. Roger T. Benitez
United States District Judge