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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 PETER ROMERO LOMAX,  
12 Plaintiff,  
13 vs.  
14 CANLAS; WHITEHEAD; FARINAS;  
15 LEHV; CHOO; JAYASUNDARA;  
16 JOHN LUBISICH; K.L.  
17 HAWTHORNE; MATTHEW KATE;  
18 N. GRANNIS; E. FRANKLIN;  
19 MEDICAL AUTHORIZATION  
20 REVIEW COMMITTEE; TYLER; R.  
21 HERNANDEZ; SILVA; E. ROMERO;  
22 G. CASSESI,  
23 Defendants.

CASE NO. 10cv2226-WQH-  
WMc  
ORDER

20 HAYES, Judge:

21 The matter before the court is the Report and Recommendation (ECF No. 91)  
22 filed by United States Magistrate Judge William McCurine recommending that the  
23 Motion to Dismiss filed by Defendant Levi Lehv, M.D. be granted (ECF No. 73).

24 **BACKGROUND**

25 On October 26, 2010, Plaintiff, formerly incarcerated at R.J. Donovan  
26 Correctional Facility ("Donovan") and proceeding pro se, initiated this action by filing  
27 a civil rights complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1). In the Complaint,  
28 Plaintiff alleges that Defendants violated his Eighth Amendment rights by failing to

1 provide adequate medical care while Plaintiff was incarcerated at Donovan from 2007  
2 to 2009.

3 On October 19, 2012, Defendant Dr. Lehv filed the Motion to Dismiss,  
4 contending that, *inter alia*, Plaintiff failed to state a claim against Dr. Lehv for  
5 deliberate indifference to his medical needs under the Eighth Amendment. (ECF No.  
6 73). On November 30, 2012, Plaintiff filed an opposition to the Motion to Dismiss.  
7 (ECF No. 84). On December 14, 2012, Dr. Lehv filed a reply. (ECF No. 87).

8 On March 28, 2013, the Magistrate Judge issued the Report and  
9 Recommendation, recommending that Dr. Lehv's Motion to Dismiss be granted, and  
10 that Plaintiff's claims against Dr. Lehv be dismissed with prejudice. (ECF No. 91).

11 The Report and Recommendation concluded:

12 IT IS HEREBY ORDERED that no later than April 15, 2013, any  
13 party to this action may file written objections with the Court.... The  
14 parties are advised that failure to file objections within the specified time  
may waive the right to raise those objections on appeal of the Court's  
order.

15 *Id.* at 10 (citing *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991)). The docket reflects  
16 that no objections to the Report and Recommendation have been filed.

### 17 REVIEW OF THE REPORT AND RECOMMENDATION

18 The duties of the district court in connection with a report and recommendation  
19 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28  
20 U.S.C. § 636(b). The district judge must “make a de novo determination of those  
21 portions of the report ... to which objection is made,” and “may accept, reject, or  
22 modify, in whole or in part, the findings or recommendations made by the magistrate.”  
23 28 U.S.C. § 636(b). The district court need not review de novo those portions of a  
24 report and recommendation to which neither party objects. *See Wang v. Masaitis*, 416  
25 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th  
26 Cir. 2003) (en banc).

27 After reviewing the Report and Recommendation, the record in this case, and the  
28 submissions of the parties regarding the claims against Dr. Lehv, the Court finds that

1 the Magistrate Judge correctly set forth the applicable legal standards, and correctly  
2 applied those standards to the allegations of Plaintiff's Complaint. The Magistrate  
3 Judge correctly found that Plaintiff has failed to state a plausible Eight Amendment  
4 cause of action against Dr. Lehv. For the reasons stated in the Report and  
5 Recommendation, and based upon Plaintiff's failure to object to the Report and  
6 Recommendation, the Court further adopts the recommendation that Plaintiff's claims  
7 against Dr. Lehv should be dismissed without leave to amend.

8 **CONCLUSION**

9 IT IS HEREBY ORDERED that the Report and Recommendation is ADOPTED  
10 in its entirety. (ECF No. 91). The Motion to Dismiss is GRANTED. (ECF No. 73).  
11 Plaintiff's claims against Defendant Lehv are dismissed without leave to amend.

12 DATED: May 22, 2013

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14 **WILLIAM Q. HAYES**  
15 United States District Judge  
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