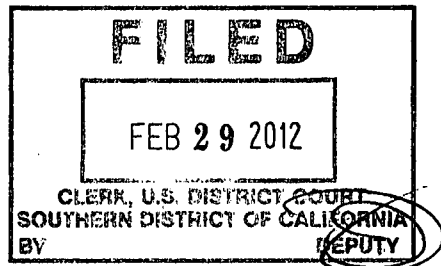


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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT SCOFIELD,  
  
vs.  
  
K. BALL, et al.,  
  
Plaintiff,  
  
Defendants.

CASE NO. 11-CV-378 BEN (WMc)  
  
**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS**  
  
[Docket Nos. 18, 22]

Plaintiff Robert Scofield, a state prisoner proceeding *pro se*, filed the instant civil rights action pursuant to 42 U.S.C. § 1983. (Docket No. 1.) Defendants C. Gray, J. Sherman, M. Penner, and K. Ball filed a Motion to Dismiss the Complaint on April 25, 2011. (Docket No. 18.) Plaintiff filed an opposition (Docket No. 19), and Defendants filed a reply (Docket No. 20).

Magistrate Judge William McCurine issued a thoughtful and thorough Report and Recommendation recommending that Defendants' Motion to Dismiss be granted in part and denied in part. (Docket No. 22.) Plaintiff filed an Objection to the Report and Recommendation. (Docket No. 26.) 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). The court "shall make a de novo determination of those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Having reviewed the matter de novo and for the reasons that follow, the Report is **ADOPTED** and the

1 Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART**.

2 It is well-established that a party objecting to a Report and Recommendation must cite specific  
3 instances of error in the Report and Recommendation. *See* FED. R. CIV. P. 72(b)(2); *United States v.*  
4 *Midgette*, 478 F.3d 616, 621 (4th Cir. 2007) (“Section 636(b)(1) does not countenance a form of  
5 generalized objection to cover all issues addressed by the magistrate judge; it contemplates that a  
6 party’s objection to a magistrate judge’s report be specific and particularized, as the statute directs the  
7 district court to review only *those portions* of the report or *specified* proposed findings or  
8 recommendations *to which objection is made*.” (internal citations and quotations omitted)). As the  
9 Fourth Circuit stated,

10 [A] party must object to the finding or recommendation on that issue with sufficient  
11 specificity so as reasonably to alert the district court of the true ground for the  
12 objection. . . . To conclude otherwise would defeat the purpose of requiring  
13 objections. We would be permitting a party to appeal any issue that was before the  
14 magistrate judge, regardless of the nature and scope of objections made to the  
15 magistrate judge’s report. Either the district court would then have to review every  
16 issue in the magistrate judge’s proposed findings and recommendations or courts of  
17 appeals would be required to review issues that the district court never considered.  
18 In either case, judicial resources would be wasted and the district court’s effectiveness  
19 based on help from magistrate judges would be undermined.

20 *Midgette*, 478 F.3d at 622; *see also* FED. R. CIV. P. 72(b)(2) (requiring objecting party to file “specific  
21 written objections to the proposed findings and recommendations”).

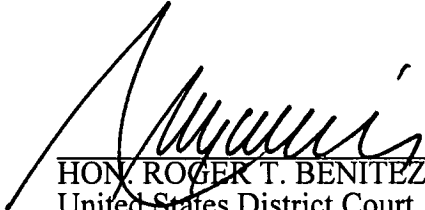
22 In his Objection, Plaintiff lays out general legal standards in regards to: (1) the Prison  
23 Litigation Reform Act, 42 U.S.C. § 1997; (2) pleading standards for pro se litigants; (3) civil rights  
24 actions brought under 42 U.S.C. § 1983; and (4) supplemental jurisdiction under 28 U.S.C. § 1367.  
25 Plaintiff does not make any specific objections to the Report and Recommendation, nor does he refer  
26 to the Report and Recommendation. As Plaintiff does not identify the portions of the Report and  
27 Recommendation that purportedly misapply the law to facts or fail to consider the significance of  
28 Plaintiff’s facts, the Court overrules Plaintiff’s Objection.

Accordingly, the Court fully **ADOPTS** Judge McCurine’s Report and Recommendation. The  
Court **GRANTS** Defendants’ motion to dismiss Plaintiff’s state law claims against Defendants  
**without prejudice**. The Court **GRANTS** Defendants’ motion to dismiss Plaintiff’s Fourteenth  
Amendment claims against Defendants **without prejudice**. The Court **DENIES** Defendants’ motion

1 to dismiss Plaintiff's Eighth Amendment claims against Defendants Gray and Ball. The Court  
2 **GRANTS** Defendants' motion to dismiss Plaintiff's First Amendment claims against Defendants Gray  
3 and Ball. Finally, the Court **DENIES** Defendants' motion to dismiss Plaintiff's state law claims  
4 pursuant to California Government Code Section 845.6 against Defendants Gray and Ball based on  
5 their alleged immunity. Plaintiff is **GRANTED** until April 13, 2012 to file a First Amended  
6 Complaint.

7 **IT IS SO ORDERED.**

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9 DATED: February *29*, 2012

  
10 HON. ROGER T. BENITEZ  
United States District Court Judge

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