

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT MARK BROWN, II,

Plaintiff,

v.

DEPUTY #1, Deputy Sheriff, et al.,

Defendants.

Case No. 12-cv-1938-GPC-BGS

ORDER:

**(1) ADOPTING REPORT AND
RECOMMENDATION, (ECF NO.
186);**

**(2) DENYING MOTION TO
STRIKE, (ECF NO. 143);**

**(3) GRANTING MOTION TO
DISMISS, (ECF NO. 144);**

**(4) DENYING MOTION TO
STRIKE AND GRANTING
ALTERNATIVE MOTION TO
DISMISS, (ECF NO. 146)**

On August 6, 2012, Plaintiff filed a complaint pursuant to 42 U.S.C. § 1983, alleging Defendants violated Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment when San Diego County Sheriff's deputies assaulted Plaintiff while in custody. (ECF No. 1.) The case was assigned to Magistrate Judge Skomal for disposition on report and recommendation.

On October 15, 2013, Plaintiff filed a first amended complaint ("FAC"), asserting a new cause of action for deliberate indifference to serious medical needs against newly named defendants Clarissa Cawagas, RN ("Cawagas") and John Serra,

1 MD (“Serra”). (ECF No. 117.)

2 On November 21, 2013, Cawagas and Serra filed a motion pursuant to Federal
3 Rule of Civil Procedure 12(f) to strike Plaintiff’s allegations against them because,
4 while Plaintiff was granted leave to amend his Complaint, Plaintiff was not granted
5 leave to assert claims against either Cawagas or Serra for infringement of Plaintiff’s
6 right to adequate medical care. (ECF No. 143.)

7 Also on November 21, 2013, Cawagas filed a motion pursuant to Federal Rule
8 of Civil Procedure 12(b)(6) to dismiss Plaintiff’s claim against her for failure to state
9 a claim for deliberate indifference to Plaintiff’s serious medical needs. (ECF No. 144.)
10 On the same day, Serra filed a motion pursuant to Federal Rule of Civil Procedure 12(f)
11 to strike Plaintiff’s allegations against Serra or, in the alternative, to dismiss Plaintiff’s
12 allegations against Serra for failure to state claim. (ECF No. 146.)

13 Plaintiff filed oppositions to the foregoing motions. (ECF Nos. 148, 151.)
14 Plaintiff requests leave to amend his FAC.

15 On March 27, 2014, Magistrate Judge Skomal issued a report and
16 recommendation (“Report”), recommending Plaintiff’s claim for deliberate indifference
17 be dismissed as to Cawagas and Serra with leave to amend, and that Cawagas’ and
18 Serra’s motions to strike be denied. (ECF No. 186.) Magistrate Judge Skomal set an
19 initial deadline of April 18, 2014, to file any objections to the Report, (*id.*), and this
20 Court extended the objection deadline to June 27, 2014, (ECF No. 210). To date, the
21 Court has received no objections to the Report.

22 A district judge’s role in reviewing a magistrate judge’s report and
23 recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, a district
24 judge “shall make a de novo determination of those portions of the report . . . to which
25 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings
26 or recommendations made by the magistrate [judge].” When no objections are filed,
27 the Court may assume the correctness of the magistrate judge’s findings of fact and
28 decide the motion on the applicable law. Campbell v. United States Dist. Ct., 501 F.2d

1 196, 206 (9th Cir. 1974); Johnson v. Nelson, 142 F. Supp. 2d 1215, 1217 (S.D. Cal.
2 2001). Under such circumstances, the Ninth Circuit has held that “a failure to file
3 objections only relieves the trial court of its burden to give de novo review to factual
4 findings; conclusions of law must still be reviewed de novo.” Barilla v. Ervin, 886
5 F.2d 1514, 1518 (9th Cir. 1989) (citing Britt v. Simi Valley Unified Sch. Dist., 708
6 F.2d 452, 454 (9th Cir. 1983)).

7 Because no objections to the Report have been filed, the Court assumes the
8 correctness of Magistrate Judge Skomal’s factual findings and adopts them in full. The
9 Court has conducted a de novo review of Magistrate Judge Skomal’s legal conclusions
10 and finds the Report provides a cogent analysis of Cawagas and Serra’s Motion to
11 Strike, Cawagas’ Motion to Dismiss, and Serra’s Motion to Strike or in the Alternative
12 Motion to Dismiss.

13 Accordingly, **IT IS HEREBY ORDERED** that:

- 14 1. The Report, (ECF No. 186), is **ADOPTED** in its entirety;
- 15 2. Cawagas and Serra’s Motion to Strike, (ECF No. 143), is **DENIED**;
- 16 3. Cawagas’ Motion to Dismiss, (ECF No. 144), is **GRANTED**;
- 17 4. Serra’s Motion to Strike or in the Alternative Motion to Dismiss, (ECF
18 No. 146), is **DENIED** as to the Motion to Strike and **GRANTED** as to the
19 Motion to Dismiss;
- 20 5. Plaintiff’s request for leave to amend his claim for deliberate indifference
21 to serious medical needs against Cawagas and Serra is **GRANTED**. If
22 Plaintiff wishes to file a second amended complaint to cure the
23 deficiencies of this claim (and only this claim), Plaintiff shall do so on or
24 before **August 8, 2014**.

25 DATED: July 15, 2014

26 
27 HON. GONZALO P. CURIEL
28 United States District Judge