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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KEITH WAYNE SEKERKE,
12 Plaintiff,
13 v.
14 SHERIFF DEPUTY GONZALEZ;
15 DEPUTY JOHN DOE; LISA GUIGUITE
16 STARK, DDA; JOHN AND JANE
17 DOES, DDA, et al.,
18 Defendants.

Case No.: 15-CV-573-JLS (WVG)

**ORDER ADOPTING REPORT AND
RECOMMENDATION RE
PLAINTIFF’S MOTION TO
REINSTATE DISMISSED
DEFENDANT**

(ECF Nos. 88, 108)

19 Presently before the Court is Plaintiff’s Motion to Reinstate Dismissed Defendant
20 Lisa Stark, (“MTN,” ECF No. 88). Also before the Court is Lisa Stark’s Response in
21 Opposition to the Motion, (ECF No. 92), and Plaintiff’s Reply in Support of the Motion,
22 (ECF No. 97). Magistrate Judge William V. Gallo’s has issued a Report and
23 Recommendation advising the Court to deny Plaintiff’s Motion, (“R&R,” ECF No. 108).

24 **PROCEDURAL BACKGROUND**

25 Judge Gallo provides an accurate summary of the relevant procedural background
26 to the present Motion:

27 On March 12, 2015, Plaintiff, proceeding *pro se* and *in forma pauperis*,
28 filed a Civil Rights Complaint pursuant to 42 U.S.C. Section 1983. (ECF No.

1 1.) On July 31, 2015, Stark filed a Motion to Dismiss the Complaint pursuant
2 to Rule 12(b)(6). (ECF No. 11.) This Court filed a Report and
3 Recommendation (“R&R”) recommending Stark be dismissed from the case.
4 (ECF No. 21.) Plaintiff did not file an objection to this R&R. On March 18,
5 2016, The Honorable Janis L. Sammartino adopted the R&R and dismissed
6 Stark without prejudice. (ECF No. 32.)

7 On July 19, 2016, Plaintiff filed a First Amended Complaint and again
8 named Stark as a defendant. (ECF No. 42.) On August 2, 2016, Stark filed
9 another Motion to Dismiss pursuant to Rule 12(b)(6). (ECF No. 44.) On
10 December 1, 2016, the parties filed a Joint Motion to Dismiss Stark pursuant
11 to Rule 41(a). (ECF No. 58.) On December 2, 2016, Judge Sammartino
12 dismissed Stark without prejudice. (ECF No. 59.)

13 On May 30, 2017, Plaintiff filed the instant Motion, requesting the court
14 reinstate Stark as a defendant.

15 (R&R 1–2.)

16 LEGAL STANDARD

17 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
18 court’s duties in connection with a magistrate judge’s R&R. The district court must “make
19 a de novo determination of those portions of the report or specified proposed findings or
20 recommendations to which objection is made,” and “may accept, reject, or modify, in
21 whole or in part, the findings or recommendations made by the magistrate judge.” 28
22 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United*
23 *States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely
24 objection, the Court “need only satisfy itself that there is no clear error on the face of the
25 record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s
26 note (citing *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

27 ANALYSIS

28 Judge Gallo analyzes Federal Rule of Civil Procedure 60(b) and finds no reason the
Court should relieve Plaintiff from the judgment dismissing Stark from this case. (*See*
generally R&R.) Judge Gallo found Plaintiff’s Motion to be a “thinly veiled attempt to
reopen discovery” and recommends the Court deny Plaintiff’s Motion with prejudice. (*Id.*
at 4–5.)

1 No Party timely objected to Magistrate Judge Gallo's R&R. (*See* R&R 5 (requiring
2 objections to be filed by February 9, 2018).) The Court finds that the R&R is well reasoned
3 and contains no clear error.

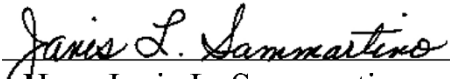
4 Accordingly, the Court hereby:

5 (1) **ADOPTS** Magistrate Judge Gallo's R&R; and

6 (2) **DENIES** Plaintiff's Motion to Reinstate Dismissed Defendant Lisa Stark **WITH**
7 **PREJUDICE.**

8 **IT IS SO ORDERED.**

9 Dated: February 20, 2018


10 Hon. Janis L. Sammartino
11 United States District Judge
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