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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BRIAN DEVERICK LEWIS,
Plaintiff,
v.
CATES, et al.,
Defendant.

Case No. 15-cv-791 DMS (MDD)
**ORDER ADOPTING REPORT
AND RECOMMENDATION**

On April 9, 2015, Plaintiff Brian Deverick Lewis, a state prisoner proceeding *pro se*, filed this Complaint pursuant to, among other statutes, 42 U.S.C. § 1983. ECF 1. On September 14, 2015, Defendants filed a Partial Motion to Dismiss the Complaint, challenging Claims One and Three. ECF 9. Plaintiff opposed the motion.

Claim One challenges the due process of the prison’s procedures, while Claim Three alleges due process violations by two individual defendants, Mathew Cates and Daniel Paramo, in connection with the prison’s housing procedures. On referral from this Court, the Magistrate Judge issued a Report and Recommendation (“R & R”) on Defendants’ motion. ECF 15. The Magistrate Judge recommended that this Court dismiss both Claims with leave to amend, and ordered that all objections to the R & R be filed by December 23, 2015.

1 The Court reviews *de novo* those portions of the R & R to which objections
2 are made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in
3 whole or in part, the findings or recommendations made by the magistrate judge.”
4 *Id.* But “[t]he statute makes it clear that the district judge must review the magistrate
5 judge’s findings and recommendations *de novo if objection is made*, but not
6 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en
7 banc) (emphasis in original); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
8 1226 (D. Ariz. 2003) (concluding that where no objections were filed, the district
9 court had no obligation to review the magistrate judge’s report). “Neither the
10 Constitution nor the statute requires a district judge to review, *de novo*, findings and
11 recommendations that the parties themselves accept as correct.” *Id.* “When no
12 objections are filed, the *de novo* review is waived.” *Marshall v. Astrue*, No.
13 08cv1735, 2010 WL 841252, at *1 (S.D. Cal. Mar. 10, 2010) (Lorenz, J.) (adopting
14 report in its entirety without review because neither party filed objections to the
15 report despite the opportunity to do so).

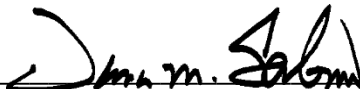
16 In this case, the deadline for filing objections was December 23, 2015. No
17 objections were filed, and neither party has requested additional time to do so.
18 Consequently, the Court may adopt the R & R on that basis alone. *See Reyna-Tapia*,
19 328 F.3d at 1121. Nonetheless, having conducted a *de novo* review of Defendants’
20 motion to dismiss, the Complaint, and the R & R, the Court hereby approves and
21 **ADOPTS** the R & R in its entirety (ECF 15), and **GRANTS** Respondents’ motion
22 to dismiss Claims One and Three. Plaintiff may amend Claim One if the amendment
23 alleges a liberty interest in avoiding administrative segregation placement that
24 imposes atypical and significant hardship upon Plaintiff. Plaintiff also may amend
25 Claim Three to allege a denial of due process arising from Plaintiff’s subsequent
26 administrative segregation placement by Defendants Cates and Paramo. The Court
27 dismisses Defendant Cates from this action without prejudice.

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IT IS SO ORDERED.

Dated: January 7, 2016



The Honorable Dana M. Sabraw
United States District Court Judge