

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DAVID B. DURAN,
Plaintiff,
v.
OMAR MANDUJANO ET AL.,
Defendants.

Case No. 15-cv-2745 DMS (WVG)

**ORDER (1) ADOPTING
MAGISTRATE JUDGE’S
REPORT AND
RECOMMENDATION AND (2)
GRANTING DEFENDANTS’
MOTION TO DISMISS**

On December 7, 2015, Plaintiff David B. Duran, a state prisoner proceeding *pro se*, filed a complaint under 42 U.S.C. § 1983. Defendants Omar Mandujano, Alfredo Hernandez, and John Seaman filed their respective Answers on June 8, 2016, and Defendant Luis Hernandez filed an Answer on June 15, 2016. Subsequently, Plaintiff filed a first amended complaint (“FAC”).¹ On September 8, 2016, Defendants filed a motion to dismiss the FAC for failure to state a claim. On January 31, 2017, Magistrate Judge William V. Gallo issued a Report and

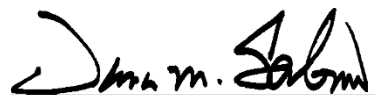
¹ On August 2, 2016, Plaintiff filed a Motion for Leave to File an Amended Complaint in order to add two exhibits. (ECF No. 33.) The Court granted the motion and ordered Plaintiff to file his FAC by September 2, 2016. (ECF No. 34.) On August 18, 2016, Plaintiff filed a Motion to Amend Document No. 33 by Permission of the Court, requesting the Court to construe his previous motion as his FAC. (ECF No. 37.) On August 23, 2016, the Court granted the motion and deemed as FAC the complaint and the exhibits filed in the Motion for Leave to File an Amended Complaint. (ECF No. 40.)

1 Recommendation (“R&R”), recommending that the Court grant in part with leave to
2 amend and grant in part without leave to amend the FAC. Plaintiff filed objections
3 to the R&R on February 21, 2017.

4 This Court, having reviewed *de novo* the Magistrate Judge’s R&R and the
5 objections thereto, adopts the Magistrate Judge’s recommendation and grants
6 Defendant’s motion to dismiss. Plaintiff is granted leave to file a Second Amended
7 Complaint (“SAC”) that cures the pleading deficiencies identified in the R&R. The
8 SAC shall be filed on or before March 31, 2017.

9 **IT IS SO ORDERED.**

10 Dated: March 1, 2017



Hon. Dana M. Sabraw
United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28