

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 ANTHONY McGINNIS, P-19835,  
12 Plaintiff,  
13 v.  
14 A.T. RAMOS,  
15 Defendant.

Case No.: 15-CV-2812 JLS (JLB)

**ORDER: (1) ADOPTING REPORT  
AND RECOMMENDATION, AND (2)  
GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS**

(ECF Nos. 9, 23)

16  
17  
18 Presently before the Court are (1) Defendant A.T. Ramos's Motion to Dismiss (ECF  
19 No. 9), and (2) Magistrate Judge Jill L. Burkhardt's Report and Recommendation granting  
20 in part and denying in part Defendant's Motion to Dismiss ("R&R," ECF No. 23).

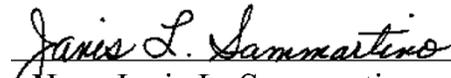
21 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district  
22 court's duties in connection with a magistrate judge's R&R. The district court must "make  
23 a de novo determination of those portions of the report to which objection is made," and  
24 "may accept, reject, or modify, in whole or in part, the findings or recommendations made  
25 by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447  
26 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). In  
27 the absence of timely objection, however, the Court "need only satisfy itself that there is  
28 no clear error on the face of the record in order to accept the recommendation." Fed. R.

1 Civ. P. 72 advisory committee's note (citing *Campbell v. U.S. Dist. Court*, 501 F.2d 196,  
2 206 (9th Cir. 1974)).

3 Here, Plaintiff failed to file timely objections to Judge Burkhardt's R&R. Having  
4 reviewed the R&R, the Court finds that it is well reasoned and contains no clear error.  
5 Accordingly, the Court (1) **ADOPTS** in its entirety Judge Burkhardt's R&R (ECF No. 23),  
6 and (2) **GRANTS IN PART** and **DENIES IN PART** Defendant's MTD (ECF No. 9).  
7 Plaintiff **SHALL FILE** an amended complaint, if any, on or before March 3, 2017. *Failure*  
8 *to file an amended complaint by this date may result in dismissal.*

9 **IT IS SO ORDERED.**

10 Dated: February 3, 2017

11   
12 Hon. Janis L. Sammartino  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28