

1 Preliminary Injunction,” which the Court construed as a motion for a preliminary
2 injunction. (ECF No. 18). The docket reflects that Defendants did not file any response
3 in opposition to this motion for a preliminary injunction.

4 On May 18, 2016, Defendants filed a motion to dismiss for failure to state a claim
5 for which relief may be granted. (ECF No. 20). On June 24, 2016, Plaintiff filed a
6 response. (ECF No. 23).

7 On October 28, 2016, the Magistrate Judge issued the Report and
8 Recommendation recommending that the Court grant in part and deny in part
9 Defendants’ motion to dismiss. (ECF No. 26).

10 On October 28, 2016, the Magistrate Judge issued the Report and
11 Recommendation recommending that the Court deny the motion for a preliminary
12 injunction. (ECF No. 25).

13 Both Reports and Recommendations stated that parties shall file any written
14 objections no later than November 10, 2016 and any reply to objections no later than
15 November 18, 2016. (ECF Nos. 25, 26).

16 The docket reflects that neither party has filed any objection to either of the two
17 Reports and Recommendations.

18 **II. Standard of Review**

19 The duties of the district court in connection with a report and recommendation
20 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28
21 U.S.C. § 636(b). The district judge must “make a de novo determination of those
22 portions of the report . . . to which objection is made,” and “may accept, reject, or
23 modify, in whole or in part, the findings or recommendations made by the magistrate.”
24 28 U.S.C. § 636(b). The district court need not review de novo those portions of a
25 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416
26 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
27 (9th Cir. 2003) (en banc) (“Neither the Constitution nor the [Federal Magistrates Act]
28 requires a district judge to review, de novo, findings and recommendations that the

1 parties themselves accept as correct.”).

2 **III. Motion to Dismiss**

3 The Report and Recommendation on the motion to dismiss recommends that the
4 Court deny the motion to dismiss as to the Eighth Amendment and state law negligence
5 claims and grant the motion to dismiss as to the due process, equal protection, and First
6 Amendment claims. (ECF No. 26). The Court has reviewed the Report and
7 Recommendation, the record, and the submissions of the parties. The Court concludes
8 that the Magistrate Judge correctly recommended that Defendants’ motion to dismiss
9 be denied as to the Eighth Amendment and state law negligence claims and granted as
10 to the due process, equal protection, and First Amendment claims. The Report and
11 Recommendation on the motion to dismiss is adopted in its entirety.

12 **IV. Motion for a Preliminary Injunction**

13 In his motion for a preliminary injunction, Plaintiff requests that the Court grant
14 a preliminary injunction “to ensure that he receives the proper medical care” for medical
15 issues with his liver. (ECF No. 18 at 14-15). In a declaration attached to his motion for
16 a preliminary injunction, Plaintiff states that he “continues to suffer due to the lack of
17 medical care and denial of prescribed treatment.” (ECF No. 18 at 4).

18 In light of the ruling that Plaintiff stated claims under the Eighth Amendment and
19 California state law, Defendants shall file a response to Plaintiff’s motion for a
20 preliminary injunction no later than December 16, 2016.

21 The Report and Recommendation on the motion for a preliminary injunction and
22 the Plaintiff’s motion for a preliminary injunction shall remain pending.

23 **V. Conclusion**

24 IT IS HEREBY ORDERED that the Report and Recommendation on
25 Defendants’ Motion to Dismiss (ECF No. 26) is ADOPTED in its entirety. The Motion
26 to Dismiss filed by Defendants (ECF No. 20) is GRANTED as to the due process, equal
27 protection, and First Amendment claims and DENIED as to the Eighth Amendment and
28 California law claims.

