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

JOEY DALE WHITMAN,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL,<sup>1</sup> Acting  
Commissioner of Social Security,  
  
Defendant.

Case No.: 16cv28-MMA (JMA)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE;**

[Doc. No. 24]

**DENYING PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT;**

[Doc. No. 22]

**GRANTING DEFENDANT’S CROSS-  
MOTION FOR SUMMARY  
JUDGMENT**

[Doc. No. 23]

On January 6, 2016, Plaintiff Joey Dale Whitman filed this social security appeal pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), challenging the denial of his application for disability benefits. Doc. 1. After granting Plaintiff leave to proceed *in forma pauperis* (“IFP”), the Court referred all matters arising in this social security appeal to the Honorable Jan M. Adler, United States Magistrate Judge, for report and recommendation pursuant to section 636(b)(1)(B) of title 28 of the United States

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<sup>1</sup> Nancy A. Berryhill is substituted as the Acting Commissioner of Social Security, replacing Carolyn W. Colvin.

1 Code and Civil Local Rule 72.1. *See* Doc. Nos. 10, 12; 28 U.S.C. § 636(b)(1)(B); S.D.  
2 Cal. Civ. R. 72.1.

3 On May 18, 2017, Judge Adler issued a thorough and well-reasoned Report  
4 containing findings and conclusions, upon which he bases his Recommendation that the  
5 Court deny Plaintiff’s motion for summary judgment and grant Defendant’s cross motion  
6 for summary judgment. *See* Doc. No. 24. Neither party objected to the Report and  
7 Recommendation, and the time for filing objections has expired.

8 The duties of the district court in connection with a magistrate judge’s report and  
9 recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and  
10 28 U.S.C. § 636(b)(1). Where the parties object to a report and recommendation, “[a]  
11 judge of the [district] court shall make a de novo determination of those portions of the  
12 [R&R] to which objection is made.” 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S.  
13 140, 149-50 (1985). When no objections are filed, the district court need not review the  
14 R&R *de novo*. *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States*  
15 *v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc). A district judge may  
16 nevertheless “accept, reject, or modify, in whole or in part, the findings or  
17 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *Wilkins v.*  
18 *Ramirez*, 455 F. Supp. 2d 1080, 1088 (S.D. Cal. 2006); *Or. Natural Desert Ass’n v.*  
19 *Rasmussen*, 451 F. Supp. 2d 1202, 1205 (D. Or. 2006).

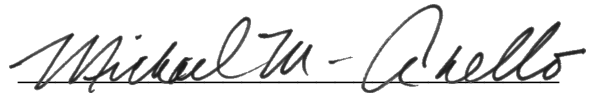
20 Here, the Court has considered the pleadings and memoranda of the parties as well  
21 as the administrative record, and has made a review and determination in accordance with  
22 the requirements of 28 U.S.C. § 636 and applicable case law. Accordingly,

- 23 1. The Court **ADOPTS** Judge Adler’s Report and Recommendation [Doc. No.  
24 24] in its entirety;
- 25 2. The Court **DENIES** Plaintiff’s Motion for Summary Judgment [Doc. No.  
26 22]; and,
- 27 3. The Court **GRANTS** Defendant’s Cross-Motion for Summary Judgment  
28 [Doc. No. 23].

1 The Clerk of Court shall enter judgment accordingly and terminate the action.

2 **IT IS SO ORDERED.**

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4 Date: July 11, 2017



5 Hon. Michael M. Anello  
6 United States District Judge  
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