

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

EUGENE M. REMUND,
Plaintiff,
v.
FERNANDO ZAMUDIO, M.D., et al.,
Defendants.

Case No.: 16cv426-JAH (AGS)

**ORDER ADOPTING THE
MAGISTRATE JUDGE’S REPORT
AND RECOMMENDATION [DOC.
NO. 24] AND DISMISSING
PLAINTIFF’S SECOND AMENDED
COMPLAINT [DOC. NO. 10] AS TO
ALL DEFENDANTS**

BACKGROUND

On February 17, 2016, Plaintiff Eugene M. Remund, a state prisoner proceeding pro se (“Plaintiff”), filed a civil rights complaint against Defendants Fernando Zamudio, M.D., R. Holt, M.D., and John Does 1 through 10 (collectively, the “Defendants”), alleging that Plaintiff was denied access to “adequate and competent medical treatment[,]” in violation of 42 U.S.C. § 1983 (“§ 1983”). See Doc. No. 1. Plaintiff did not prepay the filing fee required by 28 U.S.C. § 1914(a) at the time of filing. Instead, he filed a motion for leave to proceed in forma pauperis (“IFP”), pursuant to 28 U.S.C. § 1915(a). See Doc. No. 2. On February 29, 2016, this Court denied Plaintiff’s IFP motion without prejudice for failure to include a certified copy of his trust account or an institutional equivalent. See Doc. No. 3.

1 On April 8, 2016, Plaintiff filed (1) a renewed motion for leave to proceed IFP; and (2) a
2 “Motion for Stay and Abeyance” seeking a stay of this action until the “Inmate Trust
3 Accounts Officer” submitted his inmate trust account statement. See Doc. Nos. 4, 5. On
4 April 19, 2016, following review of Plaintiff’s inmate trust account statement and sua
5 sponte screening pursuant to 28 U.S.C. §§ 1915(e)(2)(B), this Court granted Plaintiff’s IFP
6 motion, denied the motion to stay as moot, and dismissed the Complaint without prejudice
7 for failure to state a claim. See Doc. No. 6.

8 On June 8, 2016, Plaintiff filed an amended complaint (the “FAC”), and a
9 freestanding motion to appoint counsel. See Doc. No. 7, 8. On June 29, 2016, this Court
10 denied the motion to appoint counsel, without prejudice, and dismissed the FAC for failure
11 to state a claim. See Doc. No. 9. Plaintiff was granted forty-five days leave to amend the
12 Complaint. On August 10, 2016, Plaintiff filed his second amended complaint (“SAC”).
13 On August 17, 2016, this Court directed the U.S. Marshal to effect service of the SAC on
14 Defendants, and summons was returned executed as to both Defendants, on September 30,
15 2016. See Doc. Nos. 13, 14.

16 On October 11, 2016, Defendant Zamudio filed the instant motion to dismiss the
17 SAC with prejudice, contending that Plaintiff does not, and cannot, state a cognizable §
18 1983 claim because (1) he “plead[s] no facts evidencing deliberate indifference against Dr.
19 Zamudio[;]” and (2) medical evidence on the record contradicts Plaintiff’s conclusory
20 allegations with respect to deliberate indifference to a serious medical need. See Doc. No.
21 16. The motion was set before the Honorable Andrew G. Schopler, United States
22 Magistrate Judge. On December 1, 2016, Judge Schopler accepted Plaintiff’s opposition to
23 Defendant Zamudio’s motion to dismiss, and ordered it filed nunc pro tunc to November
24 18, 2016. See Doc. Nos. 19, 23. Defendant Zamudio timely filed a reply on December 14,
25 2016. See Doc. No. 21.

26 //

27 //

28 //

1 On May 31, 2017, pursuant to 28 U.S.C. § 636(b)(1), Judge Schopler submitted a
2 report and recommendation (“Report”) to this Court recommending that Plaintiff’s SAC
3 be dismissed with prejudice, as to all Defendants, for failure to state a claim. See Doc. No.
4 24 at 4-5 (noting that Plaintiff has been provided three opportunities to overcome the
5 deficiencies referenced by this Court, and has failed each time). Pursuant to Fed. R. Civ.
6 P. 72(b)(2), Plaintiff’s objections to the Report were due no later than fourteen days after
7 service on Plaintiff. *Id.* The record reflects that no objections were filed by any party to
8 this case. Accordingly, for the reasons set forth below, this Court **ADOPTS** the Magistrate
9 Judge’s Report in its entirety, and **DISMISSES** Plaintiff’s SAC as to all Defendants.

10 DISCUSSION

11 The district court’s role in reviewing a magistrate judge’s report and
12 recommendation is set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28
13 U.S.C. § 636(b)(1). When a party objects to the magistrate judge’s report and
14 recommendation, the district court “shall make a de novo determination of those portions
15 of the report . . . to which objection is made,” and may “accept, reject, or modify, in whole
16 or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. §
17 636(b)(1); see also Fed. R. Civ. P. 72(b)(3).

18 When no objections are filed, the district court is not required to review the
19 magistrate judge’s report and recommendation. See *Wang v. Masaitis*, 416 F.3d 992, 1000
20 n. 13 (9th Cir. 2005) (stating that “de novo review of a [magistrate judge’s report and
21 recommendation] is only required when an objection is made”); *United States v. Reyna–*
22 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that 28 U.S.C. § 636(b)(1)(c)
23 “makes it clear that the district judge must review the magistrate judge’s findings and
24 recommendations de novo if objection is made, but not otherwise”). This rule of law is well
25 established within the Ninth Circuit and this district. See *Hasan v. Cates*, No. 11–cv–1416,
26 2011 WL 2470495 (S.D. Cal. June 22, 2011) (Whelan, T.) (adopting in its entirety, and
27 without review, a report and recommendation because neither party filed objections to the
28 report despite having the opportunity to do so); accord *Ziemann v. Cash*, No. 11–cv–2496,

1 2012 WL 5954657 (S.D. Cal. Nov. 26, 2012) (Benitez, R.); Rinaldi v. Poulos, No. 08-cv-
2 1637, 2010 WL 4117471 (S.D. Cal. Oct. 18, 2010) (Lorenz, J.).

3 Here, the record reflects that no party filed objections to the Report, nor moved this
4 Court for additional time to file objections. Thus, in the absence of any objections, the
5 Court **ADOPTS** the Report. For the reasons stated in the Report, which is incorporated
6 herein by reference, the SAC is **DISMISSED WITH PREJUDICE** as to all Defendants.
7 The Clerk of Court shall enter judgment reflecting the foregoing.

8 **IT IS SO ORDERED.**

9
10 DATED: July 20, 2017

11
12 
13 _____
14 JOHN A. HOUSTON
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28