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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DOYLE WAYNE DAVIS,
12 CDCR #34318,

13 Plaintiff,

14 vs.

15 DANIEL PARAMO, Warden, et al.,

16 Defendants.
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Case No.: 3:16-cv-0689-BEN-JMA

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

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20 Plaintiff Doyle Wayne Davis is incarcerated at Richard J. Donovan Correctional
21 Facility (“RJD”) in San Diego. He is proceeding pro se and has filed a complaint
22 pursuant to 42 U.S.C. § 1983. Presently before the Court are motions to dismiss filed by
23 Defendant Zamudio (ECF No. 22), Defendant Butcher (ECF No. 24), Defendants Silva,
24 Jackson, Pasha, Walker, Rodriguez, Self, Pool, Glynn, Sosa, Paramo, Roberts, and Stout
25 (ECF No. 46), and Defendant Bedane (ECF No. 61).

26 On June 13, 2017, the Honorable Jan M. Adler issued a thoughtful and thorough
27 Report and Recommendation, recommending that this Court grant in part and deny in
28 part Defendants’ motions to dismiss. (ECF No. 76). Any of the parties could file

1 objections to the Report and Recommendation by July 5, 2017. That deadline has now
2 passed and no party has filed objections.

3 A district judge “may accept, reject, or modify the recommended disposition” of a
4 magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C.
5 § 636(b)(1). “[T]he district judge must determine de novo any part of the [report and
6 recommendation] that has been properly objected to.” Fed. R. Civ. P. 72(b)(3).

7 However, “[t]he statute makes it clear that the district judge must review the magistrate
8 judge’s findings and recommendations de novo *if objection is made*, but not otherwise.”
9 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also*
10 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). “Neither the Constitution nor
11 the statute requires a district judge to review, de novo, findings and recommendations
12 that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121.

13 The Court has considered and agrees with the Report and Recommendation. The
14 Court **ADOPTS** the Report and Recommendation in its entirety. (Docket No. 76). The
15 Court orders as follows:

- 16 1. Defendant Zamudio’s motion to dismiss is **GRANTED**. (ECF No. 22);
- 17 2. Defendant Butcher’s motion to dismiss is **DENIED** with respect to his
18 argument that he is not a state actor and that Plaintiff’s first, third, and fourth
19 claims are time-barred by the statute of limitations, but **GRANTED** on the
20 ground that Plaintiff has failed to state a claim upon which relief can be granted.
21 (ECF No. 24); and
- 22 3. Defendants Silva, Jackson, Pasha, Walker, Rodriguez, Self, Pool, Glynn, Sosa,
23 Paramo, Roberts, Stout, and Bedane’s motions to dismiss are **DENIED** as to
24 their argument that Plaintiff’s complaint is barred by claim preclusion. (ECF
25 Nos. 46, 61). However, moving Defendants Jackson, Walker, Rodriguez, Self,
26 Pool, Glynn, Sosa, Paramo, Roberts, Stout, and Bedane’s motions to dismiss are
27 **GRANTED** on the ground that Plaintiff has failed to state a claim upon which
28 relief can be granted. (ECF Nos. 46, 61).

1 The case continues against Defendants Silva and Pasha.

2 **IT IS SO ORDERED.**

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4 Dated: July 10, 2017

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6 Hon. Roger T. Benitez
7 United States District Judge
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