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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ANTOINE L. CHAMBERS,
12 Plaintiff,

13 v.

14 JANSSEN PHARMACEUTICALS, INC.,
15 JANSSEN LP, JOHNSON & JOHNSON
16 & JOHNSON RESEARCH AND
DEVELOPMENT, LLC, AND DOES 1-5

17 Defendants.
18

Case No.: 16cv762 JAH-BLM

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND
GRANTING DEFENDANTS' MOTION
TO DISMISS [DOC. NO. 34]**

19 **BACKGROUND**

20 Plaintiff, Antoine L. Chambers, (“Plaintiff” or “Chambers”) filed a complaint on
21 March 31, 2016, alleging violations of state and federal laws related to the manufacturing,
22 marketing, and distribution of Risperdal, also known in its generic form as Risperidone. In
23 his complaint, Plaintiff alleges the medication caused numerous serious physical and
24 physiological side effects.

25 After filing three joint motions to continue the scheduling order deadlines regulating
26 discovery, Defendants filed a Motion to Compel Discovery Responses (Doc. No. 30). On
27 May 14, 2018, the Honorable Barbara Lynn Major, United States Magistrate Judge, granted
28 Defendants’ motion and ordered Plaintiff to serve responses to Defendants’ Interrogatories,

1 Set One and Requests for Production of Documents, Set One on or before June 4, 2018.
2 *See Doc. No. 32.* On June 18, 2018, having received no response, Defendants filed the
3 pending motion to dismiss the complaint for failure to comply with the court’s order
4 compelling discovery. Plaintiff filed no opposition.

5 On August 3, 2018, Judge Major issued a report and recommendation (“Report”)
6 addressing the motion and recommending this Court grant Defendants’ motion to dismiss.
7 Neither party filed objections.

8 After a review of the record and for the reasons set forth below, this Court **ADOPTS**
9 the magistrate judge’s Report and **GRANTS** Defendants’ motions to dismiss.

10 **DISCUSSION**

11 **I. Legal Standard**

12 The district court’s role in reviewing a magistrate judge’s report and
13 recommendation is set forth in 28 U.S.C. section 636(b)(1). Under this statute, the court
14 “shall make a *de novo* determination of those portions of the report...to which objection is
15 made,” and “may accept, reject, or modify, in whole or in part, the findings or
16 recommendations made by the magistrate judge.” *Id.* The party objecting to the magistrate
17 judge’s findings and recommendation bears the responsibility of specifically setting forth
18 which of the magistrate judge’s findings the party contests. *See Fed.R.Civ. P. 72(b)*. It is
19 well-settled, under Rule 72(b) of the Federal Rules of Civil Procedure, that a district court
20 may adopt those parts of a magistrate judge’s report to which no specific objection is made,
21 provided they are not clearly erroneous. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).

22 **II. Analysis**

23 Judge Major determined Plaintiff knowingly, intentionally, and willfully violated
24 the Court’s May 14, 2018 discovery order. Applying the five-factor test identified by the
25 Ninth Circuit in *Thompson v. Housing Authority of City of Los Angeles*, 782 F. 2d 829, 831
26 (9th Cir. 1986), Judge Major concluded that all of the factors weighed in favor of dismissal,
27 finding that Plaintiff’s refusal to conduct or respond to discovery: (1) impedes the
28 expeditious resolution of the case, (2) hinders the efficient management of the Court’s

1 docket, (3) is prejudicial to Defendants in the form of wasted time, resources and effort,
2 and (4) prevents disposition of the case on its merits. Judge Major also considered and
3 rejected the imposition of less drastic sanctions in light of the circumstances and the
4 likelihood that monetary or evidentiary sanctions would prove unsuccessful. Based upon
5 Plaintiff's failure to participate in discovery, respond to or comply with the discovery order,
6 and after consideration of the afore-mentioned factors, Judge Major recommends the
7 motion to dismiss be granted.

8 This Court conducted a *de novo* review of all relevant filings and finds the Report
9 provides a cogent analysis of the issues presented in the motion. In addition, the Court
10 notes Plaintiff's *pro se* status, inability to retain new counsel, and Plaintiff's submission of
11 executed authorization forms for the release of medical records and mental health records
12 from the Department of Veteran Affairs. Based on an independent review of the record,
13 the Court finds dismissal without prejudice appropriate.

14 **CONCLUSION AND ORDER**

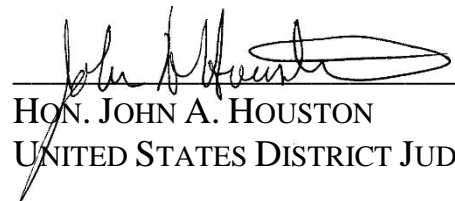
15 For the reasons set forth above, **IT IS HEREBY ORDERED:**

- 16 1. The findings and conclusions of the magistrate judge presented in the Report
17 are **ADOPTED in their entirety**;
- 18 2. Defendants' motion to dismiss (Doc. No. 34) is **GRANTED**; and
- 19 3. The complaint is **DISMISSED without prejudice**.
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21 **IT IS SO ORDERED.**

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23 DATED: November 16, 2018

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26 HON. JOHN A. HOUSTON
27 UNITED STATES DISTRICT JUDGE
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