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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARCUS D. BRICENO,

Plaintiff,

v.

BLAKE WILLIAMS, San Diego Police
Officer; CHRIS CUMMINGS, San Diego
Police Officer,

Defendants.

Case No.: 16cv1665-JAH (AGS)

**ORDER ADOPTING THE
MAGISTRATE JUDGE’S REPORT
AND RECOMMENDATION (Doc. No.
49) AND DENYING PLAINTIFF’S
MOTION TO AMEND (Doc. No. 44)**

INTRODUCTION

The matter comes before the Court on Report and Recommendation (the “Report”) from the Honorable Andrew G. Schopler, United States Magistrate Judge, filed pursuant to 28 U.S.C. § 636(b)(1). See Doc. No. 49 (recommending that this Court deny Plaintiff Marcus Briceno’s (“Plaintiff”) motion to amend. After careful consideration of the entire record, and for the reasons set forth below, this Court **ADOPTS** Judge Schopler’s Report (Doc. No. 49) in its entirety and **DENIES** Plaintiff’s motion to amend.

BACKGROUND

Plaintiff asserts that on September 19, 2013, Defendants violated his due process rights under the Fourteenth Amendment by using excessive force during his arrest. Doc. No. 1 at pg. 3. Plaintiff claims that Defendants grabbed, pushed, yanked, punched, and

1 hauled him by his neck. Id. Plaintiff asserts that during this process, he was rendered
2 unconscious and subsequently treated at a hospital. Id. at pg. 4. On June 27, 2016, Plaintiff
3 filed his Complaint. Id. at pg. 1. Defendants filed a motion to dismiss on May 7, 2018
4 alleging that Plaintiff’s Complaint is barred by statute of limitations. Doc. No. 23. On
5 November 19, 2018, this Court issued an order denying Defendants’ motion to dismiss.
6 See Doc. No. 34. Plaintiff filed a motion to amend on January 29, 2019. See Doc. No. 44.
7 On March 20, 2019, Judge Schopler issued the Report and Recommendation. See Doc.
8 No. 49. The Report and Recommendation gave parties fourteen (14) days to make
9 objections to the Report. Id. To date, no objections have been filed.

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. § 636(b)(1). Under this statute, the court “shall
14 make a de novo determination of those portions of the report...to which objection is made,”
15 and “may accept, reject, or modify, in whole or in part, the findings or recommendations
16 made by the magistrate [judge].” Id. The party objecting to the magistrate judge’s findings
17 and recommendation bears the responsibility of specifically setting forth which of the
18 magistrate judge’s findings the party contests. See Fed. R. Civ. P. 72(b). It is well-settled,
19 under Rule 72(b), that a district court may adopt those portions of a magistrate judge’s
20 report to which no specific objection is made, provided they are not clearly erroneous. See
21 Thomas v. Arn, 474 U.S. 140, 149 (1985).

22 When no objections are filed, the district court is not required to review the
23 magistrate judge’s report and recommendation. See Wang v. Masaitis, 416 F.3d 992, 1000
24 n. 13 (9th Cir. 2005) (stating that “de novo review of a [magistrate judge’s report and
25 recommendation] is only required when an objection is made”); United States v. Reyna-
26 Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that 28 U.S.C. § 636(b)(1)(c)
27 “makes it clear that the district judge must review the magistrate judge’s findings and
28

1 recommendations de novo if objection is made, but not otherwise”). This rule of law is
2 well established within the Ninth Circuit and this district. See Hasan v. Cates, No. 11-cv-
3 1416, 2011 WL 2470495 (S.D. Cal. June 22, 2011) (Whelan, T.) (adopting in its entirety,
4 and without review, a report and recommendation because neither party filed objections to
5 the report despite having the opportunity to do so); accord Ziemann v. Cash, No. 11-cv-
6 2496, 2012 WL 5954657 (S.D. Cal. Nov. 26, 2012) (Benitez, R.); Rinaldi v. Poulos, No.
7 08-cv-1637, 2010 WL 4117471 (S.D. Cal. Oct. 18, 2010) (Lorenz, J.).

8 **CONCLUSION**

9 Here, the record reflects that no party filed objections to the Report. Thus, in the
10 absence of any objections, the Court **ADOPTS** the Report. For the reasons stated in the
11 Report, which are incorporated herein by reference, Plaintiff’s motion to amend (Doc. No.
12 40) is **DENIED**. The Clerk of Court shall enter judgment reflecting the foregoing.

13 **IT IS SO ORDERED.**

14 DATED: April 29, 2019

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17 JOHN A. HOUSTON
18 United States District Judge