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

RICHARD BLANCHARD,  
  
Plaintiff,  
  
vs.  
  
COUNTY OF SAN DIEGO, *et al.*,  
  
Defendants.

Case No.: 16-cv-01783-BAS(JLB)

**ORDER:**

- (1) ADOPTING IN PART REPORT AND RECOMMENDATION (ECF No. 71);**
- (2) GRANTING DEFENDANTS WELSHAAR AND BUCHANAN’S MOTION TO DISMISS (ECF No. 50);**
- (3) GRANTING DEFENDANT SERRA’S MOTION TO DISMISS (ECF No. 59);**
- (4) GRANTING IN PART/ DENYING IN PART DEFENDANT COUNTY OF SAN DIEGO’S MOTION TO DISMISS (ECF No. 31);**
- (5) GRANTING IN PART/ DENYING IN PART DEFENDANTS GMS, DRS. GILL, HOMANN, AND PURVIANCE’S MOTION TO DISMISS (ECF No. 52); AND**
- (6) GRANTING DEFENDANT COUNTY OF SAN DIEGO’S MOTION TO STRIKE THE SECOND AMENDED COMPLAINT (ECF No. 35)**

1 **I. LEGAL STANDARD**

2 The Court reviews *de novo* those portions of a Magistrate Judge’s Report and  
3 Recommendation (“R&R”) to which objections are made. 28 U.S.C. § 636(b)(1).  
4 The Court may “accept, reject, or modify, in whole or in part, the findings or  
5 recommendations made by the magistrate judge.” *Id.* “The statute [28 U.S.C. §  
6 636(b)(1)(c)] makes it clear,” however, “that the district judge must review the  
7 magistrate judge’s findings and recommendations *de novo if objection is made*, but  
8 not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)  
9 (en banc) (emphasis in original); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d  
10 1219, 1226 (D. Ariz. 2003) (concluding that where no objections were filed, the  
11 district court had no obligation to review the magistrate judge’s report). “Neither the  
12 Constitution nor the statute requires a district judge to review, *de novo*, findings and  
13 recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328  
14 F.3d at 1121. This rule of law is well-established in the Ninth Circuit and this district.  
15 *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005) (“Of course, *de novo*  
16 review of a R & R is only required when an objection is made to the R&R.”); *Nelson*  
17 *v. Giurbino*, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopting report  
18 in its entirety without review because neither party filed objections to the report  
19 despite the opportunity to do so); *see also Nichols v. Logan*, 355 F. Supp. 2d 1155,  
20 1157 (S.D. Cal. 2004) (Benitez, J.).

21 Objections must be written and specific. *See, e.g., Fed. R. Civ. P. 72(b)(2)*  
22 (“[A] party may serve and file specific written objections to the proposed findings  
23 and recommendations” of the magistrate judge). “Numerous courts have held that a  
24 general objection to the entirety of a Magistrate Judge’s [report and recommendation]  
25 has the same effect as a failure to object.” *Alcantara v. McEwen*, No. 12-cv-401,  
26 2013 WL 4517861, at \*1 (S.D. Cal. August. 15, 2013) (citing cases). In the absence  
27 of specific objection, the clear weight of authority indicates that the court need only  
28 satisfy itself that there is no “clear error” on the face of the record before adopting

1 the magistrate judge’s recommendation. *See, e.g.,* Fed. R. Civ. P. 72(b) Advisory  
2 Comm. Notes (1983) (citing *Campbell v. United States Dist. Court*, 501 F.3d 5, 7  
3 (9th Cir. 1974)).

## 4 5 **II. ANALYSIS**

6 No objections were filed to the part of the R&R recommending that this Court  
7 grant Dr. Serra’s Motion to Dismiss (ECF No. 59) and grant Deputy Buchanan and  
8 Welshaar’s Motion to Dismiss (ECF No. 50). Furthermore, having reviewed the  
9 R&R de novo, this Court finds the Magistrate Judge’s R&R is well supported and  
10 appropriate. Hence, the Court adopts this part of the R&R and **GRANTS** the two  
11 Motions to Dismiss (ECF Nos. 50, 59) without further discussion.

12 Objections were filed, however, by Dr. Purviance (ECF No. 72), Dr. Gill (ECF  
13 No. 73), the County of San Diego (“County”) (ECF No. 75), and by Plaintiff  
14 Blanchard to the part of the R&R recommending that the Court dismiss Dr. Homann  
15 and Global Medical Staffing (“GMS”) (ECF No. 74). Hence, the Court will address  
16 each of these objections in turn.

### 17 18 **A. Dr. Purviance’s Objections**

19 Dr. Purviance does not object to the legal standard applied by the Magistrate  
20 Judge. Instead, she simply objects to the Magistrate Judge’s factual conclusions  
21 drawn from the face of the Amended Complaint. (ECF No. 72.) Dr. Purviance  
22 claims that, since the Amended Complaint alleges that the doctor directed Blanchard  
23 to the watch commander when he asked if he could see his own private orthopedic  
24 specialist, the Amended Complaint fails to allege sufficient facts to support a claim  
25 of deliberate indifference. (*Id.*)

26 However, these objections ignore the part of the R&R that concludes the  
27 Amended Complaint alleges Dr. Purviance refused to make a referral to an  
28 orthopedic specialist “under the false premise that the ‘Sheriff’s Department would

1 not approve an orthopedic referral.” (R&R at 7 (quoting Amended Complaint (ECF  
2 No. 30) at 10).) The Magistrate Judge correctly concludes that, at this stage of the  
3 proceedings and assuming all the allegations in the Amended Complaint are true, the  
4 allegation that Dr. Purviance refused to make a referral to an in-house orthopedic  
5 specialist based on false premises is sufficient to claim deliberate indifference and an  
6 Eighth Amendment violation. The fact that Dr. Purviance may have then told  
7 Blanchard he could talk to the watch commander about getting his own orthopedic  
8 doctor does not detract from the refusal to make a referral. Thus, Dr. Purviance’s  
9 objections are overruled. (ECF No. 72.)  
10

#### 11 **B. Dr. Gill’s Objections**

12 Dr. Gill also does not object to the legal standard applied by the Magistrate  
13 Judge and objects only to the Magistrate Judge’s factual conclusions. (ECF No. 73.)  
14 Dr. Gill claims that, since the Amended Complaint alleges that Dr. Gill prescribed  
15 prednisone for Blanchard and there is no claim that this is improper treatment, the  
16 claim of deliberate indifference is unsupported by the Amended Complaint.

17 Again, however, these objections ignore the plethora of other allegations  
18 against Dr. Gill. First, the Amended Complaint alleges that although the prescribed  
19 prednisone afforded Blanchard some relief, the symptoms resumed once the  
20 prednisone treatment was completed. (Amended Complaint at 11.) Blanchard  
21 informed Dr. Gill that after completing the initial prednisone treatment “the pain was  
22 worse pain than before.” (Amended Complaint at 14.) Dr. Gill prescribed additional  
23 prednisone but informed Blanchard of serious side effects stemming from this  
24 continuous use of prednisone. (Amended Complaint at 15-16.) When Blanchard  
25 asked about different treatments with lesser side effects, Dr. Gill told him they existed  
26 but would require a specialist and then denied a referral to a specialist. (Amended  
27 Complaint at 17-18.)  
28

1 In light of these additional allegations, the fact that the Amended Complaint  
2 alleges that Dr. Gill prescribed prednisone is not enough to avoid the claim that the  
3 doctor was deliberately indifferent and thus that the doctor violated Blanchard's  
4 Eighth Amendment rights. Hence, Dr. Gill's objections are overruled. (ECF No.  
5 73.)

### 6 7 **C. The County's Objections**

8 The County objects to the Magistrate Judge's R&R arguing Blanchard cannot  
9 claim deliberate indifference because of mere delays in his medical care, since the  
10 face of the Amended Complaint shows that he eventually did see the medical  
11 specialists and did get his conditions treated. (ECF No. 75.) Prison officials can be  
12 deliberately indifferent to a prisoner's serious medical needs when they "deny, delay,  
13 or intentionally interfere with medical treatment." *Hunt v. Dental Dep't*, 865 F.2d  
14 198, 199 (9th Cir. 1989) (emphasis added) (quoting *Hutchinson v. United States*, 838  
15 F.2d 390, 394 (9th Cir. 1984)).

16 The County now claims that these delays were simply the time it "took medical  
17 personnel to coordinate visits for Plaintiff to treat with medical specialists" and that  
18 "[t]he practical realities of modern medicine and scheduling medical appointments  
19 with specialists invariably involve some delays." (ECF No. 75.) That may be so.  
20 However, that is a factual issue not appropriate at this stage of the proceedings.  
21 Plaintiff alleges the delays were not the result of the "practical realities of modern  
22 medicine" but instead a money-saving policy to restrict or delay inmates' referrals to  
23 specialists. (ECF No. 30 at 174.) At this stage of the proceedings, these allegations  
24 are sufficient. Hence the County's Objections (ECF No. 75) are overruled.

1           **D.     Blanchard’s Objections**

2                   **1.     Objections Regarding Dr. Homan**

3           Blanchard objects first to the R&R that Dr. Homann be dismissed, claiming  
4 that Dr. Homann failed to promptly refer him to a specialist. (ECF No. 74.) This  
5 allegation, however, appears nowhere in the Amended Complaint. In fact, other than  
6 alleging that he actually saw Dr. Homann for medical appointments, the only two  
7 allegations against Dr. Homann in the Amended Complaint are that:

8           (1) Dr. Homan “performed a thorough examination of [Blanchard’s] condition  
9 noting swelling,” told him that he had been referred to a Rheumatologist, and  
10 prescribed him an anti-inflammatory called Indomethacin “which would help with  
11 the pain and inflammation while waiting for Rheumatologist visit” (Amended  
12 Complaint at 54), and

13           (2) “Dr. Homan performed a detail[ed] examination and explained that there  
14 was an RH appointment scheduled in about one week and the orthopedic would be  
15 in about six weeks” (Amended Complaint at 72.).

16           Although the Amended Complaint goes on to say that Blanchard did not see a  
17 Rheumatologist in one week and that it took twenty-four days before he saw a  
18 Rheumatologist, there are no allegations that this was because of anything Dr.  
19 Homann did or said. Hence, Blanchard’s objections with respect to Dr. Homan are  
20 overruled. (ECF No. 75.)

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22                   **2.     Objections Regarding GMS**

23           Blanchard objects to the R&R that GMS be dismissed arguing that, similar to  
24 a municipality, GMS should be liable for deficient medical care. (ECF No. 75.)  
25 The allegations in the Amended Complaint are the same for both GMS and the  
26 County. In the Amended Complaint, Blanchard alleges that GMS and the County  
27 had a policy or custom of restricting and/or denying referrals to medical specialists  
28 when such a case is expensive. (Amended Complaint ¶ 174.) Blanchard further

1 claims that Drs. Gill, Homan, and Purviance were following this custom or policy  
2 when they refused to send him to a medical specialist. (Amended Complaint ¶¶ 175,  
3 190.) As a result, Blanchard claims he suffered pain needlessly. (Amended  
4 Complaint ¶¶ 178, 195.)

5 The R&R recommends that the Court finds GMS acted under color of law  
6 when it treated Blanchard’s medical condition. (R&R at 5, ll. 4-15.) No one objected  
7 to this recommendation, and this Court adopts the reasoning of the R&R and this  
8 finding.

9 However, the R&R then recommends this Court find that the allegations were  
10 sufficient with respect to the County (R&R at 10, ll. 2-17), but insufficient with  
11 respect to GMS (R&R at 8, l. 20 & 9, l. 3). Blanchard objects to this recommendation  
12 arguing that GMS should be “considered similar to a municipality” because it  
13 “contracted as a private corporation with San Diego County to provide medical  
14 services.” (ECF No. 74.) GMS files no response to the objection. This Court agrees  
15 with the objection. The allegations against the two Defendants are identical, and the  
16 Court fails to see why they should be treated differently. For the reasons stated above  
17 with respect to the County, the Court **OVERRULES** the R&R and finds the  
18 allegations are sufficient with respect to GMS. Therefore, the Court sustains  
19 Blanchard’s objections with respect to GMS and **DENIES** GMS’s Motion to  
20 Dismiss.


21  
22 **III. CONCLUSION & ORDER**

23 After conducting a *de novo* review of the R&R’s reasoning, the Court  
24 concludes that Judge Shopler’s reasoning is mostly sound. Accordingly, the Court  
25 **OVERRULES** the objections of Defendants (ECF No. 72, 73, 75), **OVERRULES**  
26 **IN PART/SUSTAINS IN PART** Plaintiff’s Objections (ECF No. 74), **APPROVES**  
27 and **ADOPTS** the R&R with the exception of the recommendation that GMS be  
28 dismissed from the first cause of action. (ECF No. 71.)

1           The Court **GRANTS** the County’s Motion to Strike (ECF No. 35), **GRANTS**  
2 Defendants Welshaar and Buchanan’s Motion to Dismiss (ECF No. 50) and  
3 **GRANTS** Defendant Serra’s Motion to Dismiss (ECF No. 59). Defendants  
4 Welshaar, Buchanan, and Serra are dismissed from the Complaint. Finally, as laid  
5 out in the R&R and this Order, the Court **GRANTS IN PART/ DENIES IN PART**  
6 the remaining Defendants’ Motions to Dismiss. (ECF Nos. 31, 52.) The Court  
7 dismisses Dr. Homann from the first cause of action for a violation of the Eighth  
8 Amendment, but otherwise, the Motions to Dismiss are denied.

9           **IT IS SO ORDERED.**

10  
11 **DATED: September 11, 2017**

  
**Hon. Cynthia Bashant**  
**United States District Judge**