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

CHRISTOPHER M. MENDOZA,

Plaintiff,

v.

Doe #1, et. al.,

Defendants.

CASE NO. 16cv2184-WQH-JLB

ORDER

HAYES, Judge:

The matter before the Court is the review of the Report and Recommendation (ECF No. 14) issued by United States Magistrate recommending that the motion to dismiss filed by Defendant Ancho (ECF No. 7) be denied and that Plaintiff be granted leave to file an amended complaint.

I. Background

Plaintiff brings this action under Civil Right Act 42 U.S.C. § 1983 alleging that he was beaten by other inmates twice while in custody at a San Diego County jail. With respect to Defendant Ancho, Plaintiff alleges in Count 4 that shortly after the first assault, he was asked by Defendant Ancho why he was swollen and bruised and replied that he was assaulted. Plaintiff alleges the he told Defendant Ancho he needed to be placed in protective segregation and that Defendant Ancho replied that here is no room. Plaintiff alleges that he was then placed in unit 4-B which included inmates who were not his ethnic race and an inmate he had informed on, and that he was again jumped and beaten by several inmates.

1 The Magistrate Judge conclude that the Complaint “plausibly alleges Defendant
2 Ancho knew Plaintiff faced a substantial risk of harm in being placed in unit 4-B and
3 disregarded that risk by putting him in that unit.” (ECF No. 14 at 9). The Report and
4 Recommendation recommends that Defendant Ancho’s motion to dismiss be denied.
5 The Report and Recommendation states that “any party to this action may file written
6 objections with the Court and serve a copy on all parties **no later than July 31, 2017**”
7 and “[t]he parties are advised that failure to file objections within the specified time
8 may waive the right to raise those objections on appeal of the Court’s order.” *Id.* at 11.
9 The docket reflects that no objections to the Report and Recommendation have been
10 filed.

11 **II. Review of the Report and Recommendation**

12 The duties of the district court in connection with a report and recommendation
13 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28
14 U.S.C. § 636(b). The district judge must “make a de novo determination of those
15 portions of the report . . . to which objection is made,” and “may accept, reject, or
16 modify, in whole or in part, the findings or recommendations made by the magistrate.”
17 28 U.S.C. § 636(b). The district court need not review de novo those portions of a
18 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416
19 F.3d 992, 1000 n. 13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th
20 Cir. 2003) (en banc).

21 The Court has reviewed the Report and Recommendation and the submissions
22 of the parties. The Court adopts the recommendation of the Magistrate Judge that
23 motion to dismiss be denied. The Court does not adopt the portion of the Report and
24 Recommendation recommending “GRANTING Plaintiff leave to file a First Amended
25 Complaint if that is what he is requesting.” (ECF No. 14 at 10). The Report and
26 Recommendation states that “Plaintiff’s Opposition to the Motion to Dismiss includes
27 a request for leave to amend to assert additional allegations as to Defendant Ancho if
28 his Complaint is dismissed . . . and to name . . . additional defendants after engaging

1 in discovery.” (ECF No. 14 at 9). The Complaint has not been dismissed and discovery
2 has not commenced.

3 Leave to amend shall be “freely given when justice so requires.” Fed. R. Civ. P.
4 15(a); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). However, Local Rule 15(b)
5 states in part that “[a]ny motion to amend a pleading must be accompanied by a copy
6 of the proposed amended pleading,” Civ. L. R. 15.1(b). If Plaintiff seeks leave to file
7 an amended pleadings he is required to file a motion to file an amended complaint.

8

9 **III. Conclusion**

10 IT IS HEREBY ORDERED that the Report and Recommendation on Motion to
11 Dismiss (ECF No. 14, Page 1 through Page 9 line 16) is adopted. The motion to
12 dismiss filed by Defendant Ancho (ECF No. 7) is denied. The recommendation to grant
13 Plaintiff leave to file an amended complaint (ECF No. 14, Page 9 line 17 through Page
14 11 line 2) is not adopted.

15 DATED: August 7, 2017

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WILLIAM Q. HAYES
United States District Judge

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