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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 STEVEN GREGORY WILLIAMS,
12 Plaintiff,
13 v.
14 S. RESLER, et al.,
15 Defendant.

Case No.: 16cv2538-CAB-KSC

**ORDER: (1) ADOPTING REPORT
AND RECOMMENDATION [Doc.
No. 69]; AND (2) GRANTING IN
PART AND DENYING IN PART
MOTION TO DISMISS
PLAINTIFF’S SECOND AMENDED
COMPLAINT [Doc. No. 60]**

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18 On May 10, 2018, Defendant S. Resler filed a motion to dismiss the Second
19 Amended Complaint (“SAC”). [Doc. No. 60.] On July 20, 2018, Plaintiff filed an
20 opposition. [Doc. No. 67.] On July 27, 2018, Defendant filed a reply to the opposition.
21 [Doc. No. 68.] On August 24, 2018, Magistrate Judge Karen S. Crawford prepared a
22 Report and Recommendation (“Report”) recommending that the motion to dismiss the
23 SAC be granted in part and denied in part. [Doc. No. 69.] The Report also ordered that
24 any objections were to be filed by September 14, 2018. [Report at 13.] To date, no
25 objections have been filed, nor have there been any requests for an extension of time in
26 which to file an objection.

27 A district court’s duties concerning a magistrate judge’s report and
28 recommendation and a respondent’s objections thereto are set forth in Rule 72(b) of the

1 Federal rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are
2 filed, the district court is not required to review the magistrate judge’s report and
3 recommendation. The Court reviews *de novo* those portions of the Report and
4 Recommendation to which objections are made. 28 U.S.C. § 636(b)(1). The Court may
5 “accept, reject, or modify, in whole or in part, the findings or recommendations made by
6 the magistrate judge.” *Id.* However, “[t]he statute makes it clear that the district judge
7 must review the magistrate judge's findings and recommendations *de novo* if objection is
8 made, but not otherwise.” *United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th
9 Cir.2003) (en banc) (emphasis in original). “Neither the Constitution nor the statute
10 requires a district judge to review, *de novo*, findings and recommendations that the
11 parties themselves accept as correct.” *Id.* In the absence of timely objection, the Court
12 “need only satisfy itself that there is no clear error on the face of the record in order to
13 accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing
14 *Campbel v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

15 Here, neither party has timely filed objections to the Report. Having reviewed it,
16 the Court finds that it is thorough, well-reasoned, and contains no clear error.

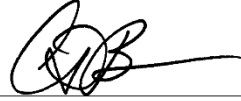
17 Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge Crawford’s Report and
18 Recommendation [Doc. No. 59]; and (2) **GRANTS IN PART AND DENIES IN PART**
19 Defendant’s motion to dismiss the SAC [Doc. No. 60] as follows:

- 20 1) The motion is **GRANTED WITH LEAVE TO AMEND** as to the events of
21 December 27, 2015;
- 22 2) The motion is **DENIED** as to the events of January 20, 2016.
- 23 3) If Plaintiff wishes to amend the SAC as to the events of December 17, 2015, he
24 shall file a Third Amended Complaint (TAC) by **October 26, 2018**. Plaintiff is
25 reminded that his pleading must be identified as his Third Amended Complaint,
26 include Civil Case No. 16cv2538-CAB-KSC in its caption, name the **all** parties
27 he wishes to sue, and allege **all** the claims he wishes to pursue in one single,
28 clear, and concise pleading.

1 4) If Plaintiff does not file a TAC by October 26, 2018, then Defendant shall
2 **answer** the SAC, as amended by this Order, by **November 9, 2018**.

3 **IT IS SO ORDERED.**

4 Dated: September 24, 2018



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6 Hon. Cathy Ann Bencivengo
7 United States District Judge
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