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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELLIOT SCOTT GRIZZLE,
Plaintiff,
v.
COUNTY OF SAN DIEGO, et al.,
Defendant.

Case No.: 17-CV-813 JLS (RBM)

**ORDER: (1) OVERRULING
OBJECTIONS,
(2) ADOPTING REPORT AND
RECOMMENDATION, AND
(3) GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS AND STRIKE
PLAINTIFF'S THIRD AMENDED
COMPLAINT**

(ECF Nos. 111, 116, 117, 118)

Presently before the Court is Defendants County of San Diego, Sheriff William Gore, Lieutenant Froistad, Lieutenant Lovelace, and Aaron Boorman's Motion to Dismiss and Strike Plaintiff's Third Amended Complaint ("Mot.," ECF No. 111). Also before the Court is Magistrate Judge Ruth Bermudez Montenegro's Report and Recommendation ("R&R," ECF No. 116) advising the Court to grant in part and deny in part the Motion to Dismiss and to deny the Motion to Strike, as well as Plaintiff Elliot Scott Grizzle's ("Pl.'s Obj.," ECF No. 117) and Defendants' ("Def.'s Obj.," ECF No. 118) Objections to Magistrate Judge Montenegro's R&R and Defendants' Reply to Plaintiff's Objections

1 (“Reply,” ECF No. 119). Having carefully considered Plaintiff’s Third Amended
2 Complaint (“TAC,” ECF No. 110), Magistrate Judge Montenegro’s R&R, the Parties’
3 arguments, and the law, the Court **OVERRULES** Plaintiff’s and Defendants’ Objections,
4 **ADOPTS** the R&R in its entirety, and **GRANTS IN PART AND DENIES IN PART** the
5 Defendants’ Motion.

6 **BACKGROUND**

7 Magistrate Judge Montenegro’s R&R contains a thorough and accurate recitation of
8 the facts and procedural history underlying the instant Motion. *See* R&R at 2–9. This
9 Order incorporates by reference the background as set forth therein.

10 **LEGAL STANDARD**

11 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
12 court’s duties in connection with a magistrate judge’s report and recommendation. The
13 district court must “make a de novo determination of those portions of the report or
14 specified proposed findings or recommendations to which objection is made,” and “may
15 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
16 magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667,
17 673–76 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). In the absence
18 of timely objection, however, the Court “need only satisfy itself that there is no clear error
19 on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72
20 advisory committee’s note (citing *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th
21 Cir. 1974)).

22 **ANALYSIS**

23 Plaintiff’s operative Third Amended Complaint alleges four causes of action against
24 Defendants for: (1) violation of Plaintiff’s rights under the Due Process Clause of the
25 Fourteenth Amendment as to his placement in the administrative segregation housing unit
26 (“Ad-Seg”); (2) violation of Plaintiff’s Eighth and Fourteenth Amendment rights premised
27 on sleep deprivation resulting from his confinement in Ad-Seg; (3) violation of Plaintiff’s
28 Eighth and Fourteenth Amendment rights premised on prevention from exercising; and

1 (4) violation of Plaintiff’s Eighth and Fourteenth Amendment Rights premised on Plaintiff
2 being forced to choose between sleep and exercise. *See* TAC ¶¶ 43–76.

3 Magistrate Judge Montenegro recommends that the Court dismiss with prejudice
4 Plaintiff’s first cause of action against Sheriff Gore and Sergeant Boorman, dismiss without
5 prejudice all causes of action against Lieutenant Froistad, and dismiss with prejudice
6 Plaintiff’s requests for injunctive and declaratory relief. *See* R&R at 12–20. Magistrate
7 Judge Montenegro otherwise recommends that the Motion be denied and that Defendants
8 County of San Diego, Sheriff Gore, Lieutenant Lovelace, and Sergeant Boorman be
9 directed to file an Answer to Plaintiff’s Third Amended Complaint. *See id.*

10 Plaintiff “reiterates and reasserts all prior arguments in Plaintiff’s objections and
11 oppositions to the defendant[.]s.”¹ Pl.’s Obj. at 1. Defendants separately object to
12 Magistrate Judge Montenegro’s recommendations that the Court deny the Motion as to
13 (1) Plaintiff’s second, third, and fourth causes of action against Lieutenant Lovelace and
14 Sergeant Boorman; and (2) Plaintiff’s request for punitive damages. *See generally* Defs.’
15 Obj. The Court reviews *de novo* those portions of Magistrate Judge Montenegro’s R&R
16 to which the Parties object and reviews for clear error the remainder of Magistrate Judge
17 Montenegro’s R&R.

18 **I. Plaintiff’s Objections**

19 Plaintiff “reiterates and reasserts all prior arguments in Plaintiff’s objections and
20 oppositions to the defendant[.]s.” Pl.’s Obj. at 1. Defendants urge the Court not to consider
21 Plaintiff’s objections on the grounds that Plaintiff has failed to “file *specific* written
22 objections” as required under Federal Rule of Civil Procedure 72(b)(2). *See* Reply at 1
23

24 ¹ Plaintiff previously objected to Magistrate Judge Montenegro’s recommendations that the Court dismiss
25 (1) Plaintiff’s first cause of action as to Sheriff Gore and Sergeant Boorman, *see* ECF No. 100 at 8; *see*
26 *generally* ECF No. 107; and (2) Plaintiff’s requests for injunctive and declaratory relief. *See* ECF No.
27 100 at 10–11. On *de novo* review, the Court explicitly overruled Plaintiff’s objections as to his first cause
28 of action as to Sheriff Gore and Plaintiff’s requests for injunctive and declaratory relief. *See* ECF No. 108
at 12–13, 14. The Court has not addressed Plaintiff’s objection as to the dismissal of his first cause of
action against Sergeant Boorman because Sergeant Boorman’s motion to dismiss was denied as moot
following the filing of Plaintiff’s operative Third Amended Complaint. *See* ECF No. 115.

1 (quoting Fed. R. Civ. P. 72(b)(2)) (emphasis in original). The Court agrees that this attempt
2 to incorporate by reference prior arguments is not proper; accordingly, the Court would be
3 well within its discretion to decline to address Plaintiff’s “Objection.” *See, e.g., H. v. Dep’t*
4 *of Educ.*, No. CV 14-00143 ACK-KSC, 2016 WL 4522177, at *4 n.2 (D. Haw. Aug. 29,
5 2016) (declining to incorporate by reference into objection to findings and recommendation
6 arguments raised in prior filings); *Roth v. Meridian Fin. Network, Inc.*, No. CIV.07-00045
7 JMS/BMK, 2008 WL 3850478, at *2–3 (D. Haw. Aug. 19, 2008) (declining to incorporate
8 by reference into objection to findings and recommendation arguments raised in opposition
9 to motion); *see also Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 345 (9th Cir. 1996) (“[T]he
10 incorporation of substantive material by reference is not sanctioned by the federal rules.”);
11 *McCracken v. Thor Motor Coach Inc.*, No. CV-15-00029-PHX-ROS, 2015 WL 13566918,
12 at *2 (D. Ariz. Dec. 3, 2015) (“Courts ‘are not like pigs, hunting for truffles buried in
13 briefs,’ . . . and it would not be fair to require opposing counsel to engage in hunting
14 expeditions either. Incorporating prior arguments by reference in motion papers is
15 generally ignored by the Court.”) (quoting *Indep. Towers of Wash. v. Washington*, 350 F.3d
16 925, 929 (9th Cir. 2003)).

17 In any event, Plaintiff’s “Objection” does not change the Court’s conclusion. Judge
18 Montenegro recommends that the Court dismiss with prejudice Plaintiff’s first cause of
19 action against Sheriff Gore and Sergeant Boorman and Plaintiff’s requests for injunctive
20 and declaratory relief. *See* R&R at 12–13, 15, 17–18. As indicated above, *see supra* note
21 1, the Court previously overruled Plaintiff’s objections to the dismissal of his first cause of
22 action against Sheriff Gore and requests for injunctive and declaratory relief, *see* ECF No.
23 108 at 12–13, 14, and Plaintiff has not alleged new facts supporting his first cause of action
24 against Sheriff Gore or that there is any reasonable expectation that he will again be
25 subjected to the Ad-Seg conditions at SDCJ. *Compare* ECF No. 88, *with* TAC; *see also*
26 R&R at 6, 12, 17–18. On *de novo* review, the Court therefore agrees with Magistrate Judge
27 Montenegro’s recommendations that the Court dismiss with prejudice Plaintiff’s first cause
28 of action against Sheriff Gore and Plaintiff’s requests for injunctive and declaratory relief.

1 As for Plaintiff's first cause of action against Sergeant Boorman, the Court
2 previously concluded that the March 30, 2017 letter "does not appear to address Plaintiff's
3 due process cause of action," *see* ECF No. 108 at 13 (citing SAC Ex. A), meaning Plaintiff
4 has failed to allege that Sergeant Boorman was on notice of Plaintiff's allegedly
5 unconstitutional placement and continued detention in Ad-Seg. The Court therefore
6 concludes on *de novo* review that the Third Amended Complaint's allegations concerning
7 Sergeant Boorman fail plausibly to allege that Sergeant Boorman had knowledge of
8 Plaintiff's placement in Ad-Seg, that Sergeant Boorman personally participated in
9 Plaintiff's placement in Ad-Seg, or that there exists a sufficient causal connection between
10 Sergeant Boorman's actions and Plaintiff's placement in Ad-Seg. *See* R&R at 15. The
11 Court therefore **OVERRULES** Plaintiff's objections, **ADOPTS** Magistrate Judge
12 Montenegro's recommendations, and **DISMISSES WITH PREJUDICE** Plaintiff's first
13 cause of action against Sheriff Gore and Sergeant Boorman and Plaintiff's requests for
14 injunctive and declaratory relief.

15 **II. Defendants' Objections**

16 **A. *Second, Third, and Fourth Causes of Action Against Lieutenant Lovelace***

17 Magistrate Judge Montenegro concludes that Plaintiff's Third Amended Complaint
18 "asserts sufficient allegations to establish a causal connection between Lovelace's
19 classification decision and the unlawful conditions of confinement" and, consequently,
20 "recommends Defendants' Motion to Dismiss the second, third, and fourth causes of action
21 against Lieutenant Lovelace be **DENIED**." R&R at 14 (emphasis in original). Defendants
22 object on the grounds that the Third Amended Complaint's allegations concerning
23 Lieutenant Lovelace's "aware[ness]" of conditions of confinement within Ad-Seg "does
24 not include *facts* that show Lieutenant Lovelace knew of the type of constitutional
25 violations allegedly occurring in the unit," meaning "[f]acts supporting Lieutenant
26 Lovelace's alleged indifference are absent from the TAC." Defs.' Obj. at 6 (emphasis in
27 original).

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1 Plaintiff alleges that Lieutenant Lovelace “was employed as a peace officer by the
2 County of San Diego Sheriff Department . . . in the ‘classification’ section of the San Diego
3 County Central Jail.” TAC ¶ 9. Plaintiff further alleges that “Defendant Lovelace is a
4 supervisor” who “was aware of the constitutionally deficient Ad-Seg. program at the San
5 Diego County Central Jail, but still subjected Plaintiff to the constitutional injury as
6 described below in the Ad-Seg. program through sleep deprivation, lack of outdoor
7 exercise, and forcing inmates to choose between sleep and exercise.” *Id.*; *see also id.* ¶¶ 42,
8 57, 66, 73, 75. Plaintiff adds that he “personally spoke to” Lieutenant Lovelace about these
9 issues. *See id.* ¶¶ 34–35; *see also id.* ¶¶ 55–56, 64–65, 72.

10 Although Defendants urge that “the TAC is silent on any connection that Lieutenant
11 Lovelace is supposed to have had with the ad-seg housing unit,” Defs.’ Objs. at 6, Plaintiff
12 alleges that Lieutenant Lovelace worked in the “classification” section, *see* TAC ¶ 9, which
13 was responsible for placing inmates in Ad-Seg. *See id.* ¶ 18. To the extent Defendants
14 contend that Lieutenant Lovelace was unaware of the conditions of confinement of the
15 wards to which she assigned inmates, that argument strains credulity, particularly when
16 coupled with Plaintiff’s allegations that he personally spoke with Lieutenant Lovelace
17 about the conditions of his confinement in that unit. Accordingly, the Court concludes on
18 *de novo* review that Plaintiff adequately states a claim against Lieutenant Lovelace for
19 deliberate indifference to the allegedly unconstitutional conditions of his confinement in
20 Ad-Seg, including sleep deprivation, denial of yard time, and choice between sleep and
21 exercise. The Court therefore **OVERRULES** Defendants’ objection, **ADOPTS**
22 Magistrate Judge Montenegro’s recommendation, and **DENIES** Defendants’ Motion as to
23 Plaintiff’s second, third, and fourth causes of action against Lieutenant Lovelace.

24 ***B. Second, Third, and Fourth Causes of Action Against Sergeant Boorman***

25 Magistrate Judge Montenegro similarly recommends that the Court deny
26 Defendants’ Motion as to Plaintiff’s second, third, and fourth causes of action against
27 Sergeant Boorman. *See* R&R at 16. Again, Defendants contend that “the TAC is silent on
28 any connection that Sergeant Boorman is supposed to have had with [the ad-seg] unit.”

1 Defs.’ Obj. at 2. Specifically, Defendants argue that “there are no facts to support any
2 deliberate indifference by Sergeant Boorman before Plaintiff’s March 30, 2017 letter,” *id.*,
3 and “the letter does not contain adequate facts that would lead an ‘objectively reasonable
4 officer’ in the same position as Sergeant Boorman to conclude a constitutional violation
5 was occurring” or “overcome the absence facts supporting of causation necessary for
6 individual liability.” *Id.* at 2–3. Defendant also argue that the “TAC also does not allege
7 any facts necessary to show that Sergeant Boorman had the authority or ability to correct
8 the alleged deprivations as required for causation under supervisory liability.” *Id.* at 5.

9 As for Defendant’s first argument, the Court concludes on *de novo* review that the
10 March 30, 2017 letter to which Sergeant Boorman replied contained sufficient facts to put
11 an objectively reasonable officer on notice that a constitutional violation was occurring.
12 Plaintiff’s letter goes into considerable detail about the Ad-Seg schedule, *see* TAC Ex. A,
13 which the Court previously concluded was adequate to state a claim against the County for
14 violation of Plaintiff’s Fourteenth Amendment rights. *See* ECF No. 108 at 6–8. Further,
15 the March 30, 2017 letter is not the sole extent of Plaintiff’s allegations against Sergeant
16 Boorman. As with Lieutenant Lovelace, Plaintiff alleges that he personally spoke with
17 Sergeant Boorman about the conditions of his confinement in Ad-Seg. *See* TAC
18 ¶¶ 34–35, 55–56, 64–65, 72–73. At this stage, the Court therefore concludes on *de novo*
19 review that Plaintiff alleges sufficient facts to support his allegation that Sergeant Boorman
20 was aware of the alleged constitutional violations caused by Plaintiff’s continued detention
21 in Ad-Seg.

22 Regarding Defendants’ second argument, the Court concludes on *de novo* review
23 that, “[b]ased on the allegations of the [Third Amended] Complaint, it is reasonable to infer
24 that . . . Sergeant [Boorman] w[as a] supervisor[] within the department.” *See Avalos v.*
25 *Hutchinson*, No. 219CV00049RGKRAOX, 2019 WL 6721620, at *4 (C.D. Cal. July 19,
26 2019). “Whether [Plaintiff] ultimately will be able to establish the claimed knowledge or
27 ‘blind eye’ acquiescence in the alleged [constitutional violations] is uncertain, but given
28 the liberal requirements of notice pleading, no further specificity is expected of the

1 complaint.” *See Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th
2 Cir. 2007). The Court therefore **OVERRULES** Defendants’ objection, **ADOPTS**
3 Magistrate Judge Montenegro’s recommendation, and **DENIES** Defendants’ Motion as to
4 Plaintiff’s second, third, and fourth causes of action against Sergeant Boorman.

5 **C. Plaintiff’s Request for Punitive Damages**

6 Finally, Magistrate Judge Montenegro recommends that Defendant’s Motion to
7 strike Plaintiff’s demand for punitive damages be denied because Plaintiff allegations “that,
8 despite complaining verbally and in writing concerning his Ad-Seg confinement and the
9 conditions of confinement, the Individual Defendants failed to take any action to rectify
10 the issues,” which “suffices to show reckless/callous indifference to Plaintiffs rights under
11 the Fourteenth Amendment.” R&R at 18–19 (citing *Matthews v. Holland*, No. 1:14-cv-
12 1959-SKO-PC, 2017 WL 1093847, at *6–7 (E.D. Mar. 23, 2017); R&R at 12–16).
13 Defendants object that the “punitive damages allegations against objecting Defendants in
14 the TAC based on deficient causes of action are inappropriate and should be stricken.”
15 Defs.’ Obj. at 2. Because the Court concludes on *de novo* review that Plaintiff’s second,
16 third, and fourth causes of action against Lieutenant Lovelace and Sergeant Boorman are
17 sufficient to survive dismissal, *see supra* Sections II.A–B, the Court **OVERRULES**
18 Defendants’ objection, **ADOPTS** Magistrate Judge Montenegro’s recommendation, and
19 **DENIES** Defendants’ Motion to strike Plaintiff’s request for punitive damages against
20 Lieutenant Lovelace and Sergeant Boorman.

21 **III. Remainder of the R&R**

22 The Parties do not object to the remainder of Magistrate Judge Montenegro’s
23 recommendations, including that the Court dismiss without prejudice all causes of action
24 against Lieutenant Froistad. Having found no clear error, the Court **ADOPTS** the
25 remainder of Magistrate Judge Montenegro’s R&R.

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CONCLUSION

In light of the foregoing, the Court:

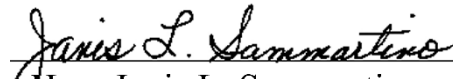
1. **OVERRULES** Plaintiff’s Objections (ECF No. 117);
2. **OVERRULES** Defendants’ Objections (ECF No. 118);
3. **ADOPTS** in its entirety Magistrate Judge Montenegro’s R&R (ECF No. 116);
4. **GRANTS IN PART AND DENIES IN PART** Defendants’ Motion (ECF

No. 111). Specifically, the Court **DISMISSES WITHOUT PREJUDICE** all causes of action against Defendant Froistad and **DISMISSES WITH PREJUDICE** Plaintiff’s first cause of action against Sheriff Gore and Sergeant Boorman and Plaintiff’s requests for injunctive and declaratory relief. Defendants’ Motion is otherwise **DENIED**; and

5. **ORDERS** Defendants County of San Diego, Sheriff Gore, Lieutenant Lovelace, and Sergeant Boorman to file an Answer to Plaintiffs Third Amended Complaint pursuant to Federal Rule of Civil Procedure 12(a)(4)(A).

IT IS SO ORDERED.

Dated: August 17, 2020


Hon. Janis L. Sammartino
United States District Judge