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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DUWAYNE JACKSON,

12 Plaintiff,

13 v.

14 DANIEL PARAMO, et al.,

15 Defendant.  
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Case No.: 17cv882-CAB-BLM

**ORDER ADOPTING REPORT AND  
RECOMMENDATION [Doc. No. 31];  
GRANTING MOTION TO DISMISS  
WITH RESPECT TO DEFENDANT  
PARAMO [Doc. No. 25]; DENYING  
MOTION FOR JUDGMENT ON  
PROCEEDINGS [Doc. No. 35]; AND  
GRANTING MOTION FOR LEAVE  
TO AMEND COMPLAINT [Doc. No.  
37]**

20 On May 2, 2017, Plaintiff Steven Duwayne Jackson, a state prisoner proceeding *pro*  
21 *se* and *in forma pauperis*, filed a complaint for violation of his civil rights pursuant to 42  
22 U.S.C. § 1983, against Defendants Paramo, Romero, Valdovinos, and Navarro alleging  
23 claims under the Eighth and Fourteenth Amendments. [Doc. No. 1.] On June 14, 2017,  
24 Plaintiff filed a First Amended Complaint (“FAC”). [Doc. No. 11.] On September 25,  
25 2017, Defendants filed a motion to dismiss the FAC as to Defendant Warden Paramo.  
26 [Doc. No. 25.] On December 18, 2017, Magistrate Judge Barbara L. Major issued a Report  
27 and Recommendation (“Report”) to grant Defendants’ motion to dismiss with leave to  
28 amend as to the Eighth and Fourteenth Amendment claims against Defendant Paramo.

1 [Doc. No. 31.] Objections to the Report were to be filed by February 23, 2018. [Doc. No.  
2 31 at 16.]

3 On February 12, 2018, Plaintiff filed a Motion for Judgment on the Proceedings.  
4 [Doc. No. 35.] On February 28, 2018, Plaintiff filed a Motion for Leave to Amend  
5 Complaint. [Doc. No. 37.] Plaintiff did not, however, file any objections to the Report.

6 A. Report/Motion to dismiss.

7 A district court's duties concerning a magistrate judge's report and recommendation  
8 and a respondent's objections thereto are set forth in Rule 72(b) of the Federal rules of  
9 Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are filed, the district court  
10 is not required to review the magistrate judge's report and recommendation. The Court  
11 reviews *de novo* those portions of the Report and Recommendation to which objections are  
12 made. 28 U.S.C. § 636(b)(1). The Court may "accept, reject, or modify, in whole or in part,  
13 the findings or recommendations made by the magistrate judge." *Id.* However, "[t]he  
14 statute makes it clear that the district judge must review the magistrate judge's findings and  
15 recommendations *de novo* if objection is made, but not otherwise." *United States v. Reyna-*  
16 *Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003) (en banc) (emphasis in original).

17 While Plaintiff did not file any objections, following *de novo* review, the Court finds  
18 the Report to be thorough, complete, and an accurate analysis of the legal issues presented  
19 in the motion to dismiss. Therefore, the Court: **ADOPTS** the Report in full and **GRANTS**  
20 the motion to dismiss with leave to amend as to the Eighth and Fourteenth Amendment  
21 claims with respect to Defendant Paramo.

22 B. Motion for Judgment on Proceedings.<sup>1</sup>

23 In the Motion for Judgment on the Proceedings, Plaintiff argues that the motion to  
24 dismiss should be denied because Defendants did not file a reply to his opposition.  
25 However, while reply papers are authorized by Local Rule 7.1.e.3, they are not required.  
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28 <sup>1</sup> The Court understands this to be a motion for judgment on the pleadings, as Plaintiff cites to Rule 12(c).

1 Therefore, Plaintiff’s argument is rejected, and the Motion for Judgment on the  
2 Proceedings is **DENIED**.

3 C. Motion for Leave to Amend Complaint.

4 In the Motion for leave to Amend Complaint, Plaintiff seeks leave to file a proposed  
5 (Second) Amended Complaint (“SAC”). Plaintiff has already been granted leave to amend  
6 as to the claims against Defendant Paramo. However, the SAC also seeks to add additional  
7 defendants. Given that the current defendants, except defendant Paramo, have not  
8 responded to the FAC, the most efficient course is to allow the filing of the SAC.  
9 Therefore, the Motion for Leave to Amend Complaint is **GRANTED**.<sup>2</sup>

10 Defendants Paramo, Romero, Valdovinos and Navarro shall respond to the SAC by  
11 **April 27, 2018**.

12 As to the newly-added Defendants -- L. Coronado, T. Geisinger, D. Clayton, and M.  
13 Deel – the Court:

14 1. **DIRECTS** the Clerk to issue an amended summons as to Plaintiff’s SAC  
15 [Doc. No. 37] to include Defendants Coronado, Geisinger, Clayton and Deel, and forward  
16 it to Plaintiff along with a blank U.S. Marshal Form 285 for each of these Defendants. In  
17 addition, the Clerk will provide Plaintiff with a certified copy of this Order, a certified copy  
18 of the SAC, and the amended summons so that he may serve them upon these Defendants.  
19 Upon receipt of this “IFP Package,” Plaintiff must complete the Form 285s as completely  
20 and accurately as possible, *include an address where each Defendant may be served, see*  
21 *S.D. Cal. CivLR 4.1.c*, and return them to the United States Marshal according to the  
22 instructions the Clerk provides in the letter accompanying his IFP package.

23 2. **ORDERS** the U.S. Marshal to serve a copy of the SAC and amended  
24 summons upon Defendants Coronado, Geisinger, Clayton and Deel, as directed by Plaintiff  
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28 <sup>2</sup> The docket shall reflect that Doc. No. 37 is now the Second Amended Complaint.


1 on the USM Form 285s provided to him. All costs of that service will be advanced by the  
2 United States. *See* 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).

3 3. **ORDERS** Defendants Coronado, Geisinger, Clayton and Deel, once served,  
4 to respond to Plaintiff's SAC within the time provided by the applicable provisions of  
5 Federal Rule of Civil Procedure 12(a).

6 4. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to  
7 serve upon Defendants Coronado, Geisinger, Clayton and Deel, or, if appearance has been  
8 entered by counsel, upon Defendants' counsel, a copy of every further pleading, motion,  
9 or other document submitted for the Court's consideration pursuant to Fed. R. Civ. P. 5(b).  
10 Plaintiff must include with every original document he seeks to file with the Clerk of the  
11 Court, a certificate stating the manner in which a true and correct copy of that document  
12 has been served on Defendants or their counsel, and the date of that service. *See* S.D.  
13 Cal. CivLR 5.2. Any document received by the Court which has not been properly filed  
14 with the Clerk, or which fails to include a Certificate of Service upon the Defendants, may  
15 be disregarded.

16 **IT IS SO ORDERED.**

17 Dated: March 28, 2018

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20 Hon. Cathy Ann Bencivengo  
21 United States District Judge  
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