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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ALLEN HAMMLER,

12 Plaintiff,

13 v.

14 J. HERNANDEZ, et al.,

15 Defendant.

Case No.: 18cv259-CAB-MDD

**ORDER ADOPTING REPORT AND
RECOMMENDATION [Doc. No. 32]
AND GRANTING MOTION TO
DISMISS [Doc. No. 28]**

16
17 Plaintiff Allen Hammler (“Plaintiff”), a state prisoner proceeding *pro se* and *in*
18 *forma pauperis*, filed his complaint on February 2, 2018, pursuant to 42 U.S.C. §1983,
19 claiming that two individuals retaliated against him in violation of the First Amendment
20 and failed to protect him in violation of the Eighth Amendment. [Doc. No. 1 at 3-25.]
21 On August 9, 2018, Defendants moved to dismiss the failure to protect claim and all
22 claims against both defendants in their official capacities. [Doc. No. 15-1 at 5-7.] On
23 December 11, 2018, Magistrate Judge Mitchell D. Dembin issued a Report and
24 Recommendation (“Report”) to grant (in part) the motion to dismiss. [Doc. No. 21.] On
25 January 9, 2019, this Court issued an order adopting the Report and granting in part the
26 motion to dismiss. [Doc. No. 24.]

27 On February 7, 2017, Plaintiff filed the First Amended Complaint (“FAC”). [Doc.
28 No. 25.] On March 8, 2019, Defendants filed a motion to dismiss Plaintiff’s failure to

1 protect claim in the FAC. [Doc. No. 28.] On June 3, 2019, Magistrate Judge Dembin
2 issued a Report and Recommendation to grant the motion to dismiss (“Report re FAC”).
3 [Doc. No. 32.] The Report re FAC also ordered that any objection to the Report re FAC
4 be filed by June 24, 2019. [Report re FAC at 12.] To date, no objection has been filed,
5 nor have there been any requests for an extension of time in which to file an objection.

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

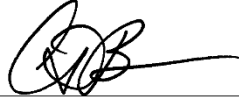
22 Here, neither party has timely filed objections to the Report re FAC. Having
23 reviewed it, the Court finds that it is thorough, well-reasoned, and contains no clear error.
24 Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge Dembin’s Report and
25 Recommendation [Doc. No. 32]; and (2) **GRANTS** the motion to dismiss the failure to
26 protect claim in the FAC [Doc. No. 28]. As a result, Plaintiff’s only remaining claim is

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1 the First Amendment Retaliation claim against both Defendants. Defendants shall
2 **answer** the FAC, as amended by this order, by **July 26, 2019**.

3 **IT IS SO ORDERED.**

4 Dated: July 5, 2019



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6 Hon. Cathy Ann Bencivengo
United States District Judge

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