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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 John Henry YABLONSKY

12 Plaintiff,

13 v.

14 CALIFORNIA DEPARTMENT OF  
15 CORRECTION AND  
16 REHABILITATION,

17 Defendants.

Case No.: 18cv1122-CAB-AGS

**ORDER: (1) ADOPTING REPORT  
AND RECOMMENDATION [Doc.  
No. 30]; GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS [Doc. No. 17]; and  
GRANTING MOTION TO AMEND  
THE COMPLAINT [Doc. No. 29]**

18 On November 16, 2018, Defendants D. Powell, G. Martinez, J. Robles, D.  
19 McGuire, R. Blahnik, and C. Tiscarnia (“Defendants”) filed a motion to dismiss the  
20 complaint for failure to state a claim. [Doc. No. 17.] On December 27, 2018, Plaintiff  
21 John Henry Yablonsky (“Plaintiff”) filed an opposition. [Doc. No. 21.] On February 19,  
22 2019, Defendants filed a reply. [Doc. No. 22.] On February 28, 2019, Plaintiff filed a  
23 sur-reply. [Doc. No. 23.] While the motion to dismiss was under submission, on August  
24 12, 2019, Plaintiff filed a motion to amend the complaint. [Doc. No. 29.] On August 21,  
25 2019, Magistrate Judge Andrew G. Schopler prepared a Report and Recommendation  
26 (“Report”) recommending that the motion to dismiss be granted in part and denied in  
27 part, and the motion to amend the complaint be granted. [Doc. No. 30.] The Report also  
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1 ordered that any objections were to be filed by September 4, 2019. [Report at 9.] To date,  
2 no objection has been filed, nor have there been any requests for an extension of time in  
3 which to file an objection.

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

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

22 Accordingly, the Court hereby:

23 (1) **ADOPTS** Magistrate Judge Schopler’s Report and Recommendation;

24 (2) **GRANTS IN PART AND DENIES IN PART** the motion to dismiss as  
25 follows:

- 26 a. The denied-access-to-courts claim is **DISMISSED**, with leave to amend;
- 27 b. The federal-criminal-law claim is **DISMISSED WITH PREJUDICE**;


1 c. The 42 U.S.C. §1985(2) conspiracy claim is **DISMISSED**, with leave to  
2 amend;

3 (3) Plaintiff's motion to amend his complaint to add another cause of action is  
4 **GRANTED**;

5 (4) Plaintiff shall file any Amended Complaint no later than **October 2, 2019**.  
6 Plaintiff's Amended Complaint must be complete in itself without reference to his  
7 original pleading. Defendants not named and any claims not re-alleged in the Amended  
8 Complaint will be considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc.*  
9 *v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended  
10 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.  
11 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an  
12 amended pleading may be “considered waived if not repled.”)

13 **IT IS SO ORDERED.**

14 Dated: September 10, 2019

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17 Hon. Cathy Ann Bencivengo  
18 United States District Judge  
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