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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GEORGE A. TOLIVER,

Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE
OFFICER J. SOLES, et al.,

Defendants.

Case No. 2:17-cv-02612-MMD-CWH

ORDER

Pro se Plaintiff George A. Toliver, who was previously the custody of the Nevada Department of Corrections (“NDOC”) for alleged parole violations, brings this action under 18 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Carl W. Hoffman, recommending that the Court allow his first two claims to proceed past screening, but dismiss his third claim with leave to amend, and grant his application to proceed in forma pauperis. (ECF No. 9.) Plaintiff had until June 19, 2019 to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the Court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” *Id.* Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See *United States v.*

1 Reyna-Tapia, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
2 employed by the district court when reviewing a report and recommendation to which no
3 objections were made); see also Schmidt v. Johnstone, 263 F. Supp. 2d 1219, 1226 (D.
4 Ariz. 2003) (reading the Ninth Circuit's decision in Reyna-Tapia as adopting the view that
5 district courts are not required to review "any issue that is not the subject of an objection.").
6 Thus, if there is no objection to a magistrate judge's recommendation, then the Court may
7 accept the recommendation without review. See, e.g., Johnstone, 263 F. Supp. 2d at
8 1226 (accepting, without review, a magistrate judge's recommendation to which no
9 objection was filed).

10 While Plaintiff has failed to object to Judge Hoffman's recommendation to allow
11 two of his claims to proceed past screening, but dismiss the other claim with leave to
12 amend, the Court will conduct a de novo review to determine whether to adopt the R&R.
13 Judge Hoffman construed Plaintiff's Complaint as containing three claims: (1) false arrest;
14 (2) false imprisonment; and (3) retaliation. (ECF No. 9 at 3-5.) Judge Hoffman found that,
15 liberally construed, Plaintiff stated a claim for false arrest that should proceed past
16 screening based on his allegation that police officers arrested him for a parole violation
17 without probable cause because they falsified their police report when they arrested him
18 on his bicycle, writing that he was intoxicated. (Id. at 3-4.) Second, Judge Hoffman found
19 Plaintiff stated a colorable claim for false imprisonment because his imprisonment for
20 alleged parole violations was based on the false police report stating he was intoxicated,
21 which cited no evidence. (Id. at 5.) Third, however, Judge Hoffman found Plaintiff had not
22 stated a retaliation claim, and recommended dismissal of that claim without leave to
23 amend. (Id. at 5.) Having reviewed the R&R (which Plaintiff did not oppose), and Plaintiff's
24 Complaint, the Court agrees with Judge Hoffman.

25 It is therefore ordered that Judge Hoffman's Report and Recommendation (ECF
26 No. 9) is adopted in full.

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1 It is further ordered that the version of the Complaint already filed by the Clerk of
2 Court as directed by Judge Hoffman's R&R (ECF No. 10) is the operative complaint in
3 this case.

4 It is further ordered that Plaintiff's false arrest claim (claim one) will proceed against
5 Las Vegas Metropolitan Police Department Officer J. Soles #15320, unnamed Las Vegas
6 Metropolitan Police Department Officer #15319, and parole officer John D. Mehalko.

7 It is further ordered that Plaintiff's false imprisonment claim (claim two) will proceed
8 against parole officer John D. Mehalko, parole sergeant E. Tanner, and parole lieutenant
9 Shane Brandon.

10 It is further ordered that Plaintiff's retaliation claim (claim three) is dismissed, with
11 leave to amend.

12 It is further ordered that, if Plaintiff chooses to file an amended complaint curing
13 the deficiencies of his complaint, as outlined in this order, Plaintiff must file the amended
14 complaint within 30 days from the date of entry of this order.

15 It is further ordered that the Clerk of Court will send to Plaintiff the approved form
16 for filing a § 1983 complaint and instructions for the same. If Plaintiff chooses to file an
17 amended complaint, he must use the approved form and he must write the words "First
18 Amended" above the words "Civil Rights Complaint" in the caption.

19 It is further ordered that, if Plaintiff chooses to file an amended complaint, the Court
20 will screen the amended complaint in a separate screening order. The screening process
21 will take several months.

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1 It is further ordered that, if Plaintiff chooses not to file an amended complaint curing
2 the stated deficiencies of the complaint within 30 days , Plaintiff's false arrest claim (claim
3 one) will proceed against Las Vegas Metropolitan Police Department Officer J. Soles
4 #15320, unnamed Las Vegas Metropolitan Police Department Officer #15319, and parole
5 officer John D. Mehalko, and Plaintiff's false imprisonment claim (claim two) will proceed
6 against parole officer John D. Mehalko, parole sergeant E. Tanner, and parole lieutenant
7 Shane Brandon; and Plaintiff's retaliation claim (claim three) will be dismissed. Plaintiff
8 may also notify the Court of his decision not to file an amended complaint instead of
9 waiting to let the 30 day period expire.

10 DATED THIS 20th day of June 2019.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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