

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ISMAEL PADILLA,)
)
Plaintiff,)
vs.)
SECOND CIRCUIT COURT OF APPEALS,)
et al.,)
Defendants.)

Case No.: 2:23-cv-01511-GMN-BNW

**ORDER ADOPTING
REPORT AND RECOMMENDATION**

Pending before the Court is the Order and Report and Recommendation (“R&R”), (ECF No. 24), from United States Magistrate Judge Brenda Weksler, which recommends denying Plaintiff’s Motion for Injunctive Relief, (ECF No. 23), because Plaintiff has not yet been approved to proceed *in forma pauperis*, or paid the \$405 filing fee. The Magistrate Judge must review Plaintiff’s Complaint and approve his application to proceed *in forma pauperis* before the Court can evaluate the merits of his Motion for Injunctive Relief.

A party may file specific written objections to the findings and recommendations of a United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo* determination of those portions to which objections are made if the Magistrate Judge’s findings and recommendations concern matters that may not be finally determined by a magistrate judge. D. Nev. R. IB 3-2(b). The 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); D. Nev. R. IB 3-2(b). 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) (citing 28 U.S.C. § 636(b)(1)). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s R&R where no objections have been

1 filed. *See, e.g., United States v. Reyna–Tapia*, 328 F.3d 1114, 1122 (9th Cir. 2003).

2 The *pro se* Plaintiff filed a Motion to Reopen all prior Denied and Dismissed Motions,
3 which the Court will liberally construe as an objection to the R&R. (*See* ECF No. 26). In her
4 Report and Recommendation, the Magistrate Judge noted that before any other action can be
5 taken in this case, Plaintiff must submit a complete action to proceed *in forma pauperis*, or pay
6 the \$405 filing fee. Plaintiff has submitted an amended Motion to Proceed *In Forma Pauperis*,
7 (ECF No. 25), which will be reviewed by the Magistrate Judge in the normal course.

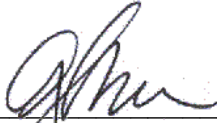
8 Plaintiff's Objection argues, among other things, that he was subject to an
9 unconstitutional prosecution. However, before ruling on Plaintiff's Motion for Injunctive
10 Relief, the Magistrate Judge must review Plaintiff's Complaint and Motion to Proceed *In*
11 *Forma Pauperis* to determine whether his allegations state a claim for relief. A motion for
12 injunctive relief requires the Court to determine Plaintiff's likelihood of success on the merits
13 of his claim. The Court therefore ADOPTS the Report and Recommendation and advises
14 Plaintiff that his Motion may be refiled after his application to proceed *in forma pauperis* is
15 approved, or he pays the filing fee.

16
17 Accordingly,

18 **IT IS HEREBY ORDERED** that the Report and Recommendation, (ECF No. 24), is
19 **ACCEPTED and ADOPTED** in full.

20 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Injunctive Relief, (ECF No.
21 23), is **DENIED** without prejudice.

22 Dated this 8 day of May, 2024.

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Gloria M. Navarro, District Judge
United States District Court