

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JASON ERIC SONNTAG,)
) 3:07-CV-311-RCJ(RAM)
)
) Plaintiff,)
)
) v.)
)
) DENNIS BALAAM, et al.,)
)
) Defendants.)

Before the Court is Plaintiff's Opposition to Report and Recommendation of Magistrate Judge Motion to Strike and Vacate Biased, Conflicted Report (#72) filed on August 24, 2009. This action was referred to U.S. Magistrate Robert A. McQuaid, Jr., pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. The Magistrate Judge submitted his Report and Recommendation (#71) on August 3, 2009, recommending that this Court enter an order granting Defendants' Motion to Dismiss the Second Amended Complaint (#64).

I. ANALYSIS

A. Review of Magistrate Judge's Order

Pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 3-2, a party may file specific written objections to the findings and recommendations of a magistrate judge made pursuant to LR IB 1-4. The district court must make a *de novo* determination of those portions of the

///
///

1 magistrate judge's report to which objection is made and may accept, reject, or modify, in
2 whole or in part, the findings or recommendations made by the magistrate judge. LR IB 3-2(b).

3 *De novo* review means the court must consider the matter anew, the same as if it had not
4 been heard before and as if no decision previously had been rendered. Ness v.
5 Commissioner, 954 F.2d 1495, 1497 (9th Cir. 1992). Thus, although the district court need
6 not hold a *de novo* hearing, the court's obligation is to arrive at its own independent conclusion
7 about those portions of the magistrate judge's findings or recommendation to which objections
8 are made. United States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989).

9 After conducting a *de novo* review of the record, the Court accepts and adopts the
10 Magistrate Judge's Minutes of the Court (#71).

11 III. CONCLUSION

12 IT IS HEREBY ORDERED that the court ACCEPTS and ADOPTS in whole the Report
13 and Recommendation of U.S. Magistrate Judge (#71), and Plaintiff's Opposition to Report and
14 Recommendation of Magistrate Judge Motion to Strike and Vacate Biased, Conflicted Report
15 (#72) is DENIED.

16 IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (#64) is GRANTED as
17 follows:

18 1. Counts I and II of the Second Amended Complaint (#42) are DISMISSED with
19 prejudice and Count III with leave to amend.

20 IT IS FURTHER ORDERED that Plaintiff shall file a Third Amended Complaint stating
21 only Count III in a manner identical to the previously filed Complaint (#14) within thirty (30)
22 days from entry of this Order. The Clerk of the Court shall enter judgment accordingly.

23 IT IS SO ORDERED.

24 DATED: This 23 day of October, 2009.

25
26
27
28


Robert C. Jones
UNITED STATES DISTRICT JUDGE