

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

* * *

ROBERT MACHLAN,

v.

DWIGHT NEVEN, et al.,

Plaintiff,

Defendants.

Case No. 3:13-cv-00337-MMD-VPC

ORDER ADOPTING AND ACCEPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
VALERIE P. COOKE

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie Cooke (dkt. no. 74) (R&R) relating to Plaintiff’s motion for summary judgment (dkt. no. 34) and Defendants’ cross-motion for summary judgment (dkt. no. 45). Objections to the R&R were due on March 6, 2015. No objection has been filed. Also before the Court is Defendants’ motion for leave to file under seal. (Dkt. no. 43.)

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.” 28 U.S.C. § 636(b)(1). 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.

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

10 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
11 determine whether to adopt Magistrate Judge Cooke's R&R. The Magistrate Judge
12 exercises her discretion to screen Plaintiff's Amended Complaint because of significant
13 differences between the original Complaint and the Amended Complaint, including
14 some claims that did not survive the initial screening and new legal theories. After
15 rescreening, the Magistrate Judge recommends dismissal without leave to amend the
16 following claims: the Eighth Amendment claim in Count I; all equal protection claims in
17 Count II; and the Eighth Amendment claim in Count III. The Magistrate Judge then
18 considered the remaining claims under Fed. R. Civ. P. 56 standards and recommends
19 that summary judgment be granted. Upon reviewing the R&R and underlying briefs, this
20 Court finds good cause to adopt the Magistrate Judge's R&R in full.

21 Defendants seek to file under seal two exhibits which consist of Plaintiff's medical
22 classification charts. (Dkt. no. 43.) Good cause appearing, Defendants' motion for leave
23 to file confidential documents under seal is granted.

24 It is therefore ordered, adjudged and decreed that the Report and
25 Recommendation of Magistrate Judge Valerie P. Cooke (dkt. no. 74) is accepted and
26 adopted in its entirety. The following claims are dismissed without leave to amend: the
27 Eighth Amendment claim in Count I; all equal protection claims in Count II; and the

28 ///

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


Eighth Amendment claim in Count III. Summary judgment on the remaining claims is granted in Defendants' favor.

It is therefore ordered that Plaintiff's motion for summary judgment (dkt. no. 34) is denied. Defendants' cross-motion for summary judgment (dkt. no. 45) is granted.

It is further ordered that Defendants' motion for leave to file confidential documents under seal (dkt. no. 43) is granted.

The Clerk is directed to enter judgment in favor of Defendants and close this case.

DATED THIS 27th day of March 2015.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE