

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KEVIN HERNANDEZ,

Plaintiff,

JAMES GREG COX, *et al.*,

Defendants.

Case No. 3:14-cv-00578-MMD-VPC

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

Before the Court is the Amended Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 387) (“R&R”) relating to defendants’ motion for summary judgment (“Motion”) (ECF No. 342, 344 (sealed)). The Magistrate Judge recommends granting the Motion in part and denying it in part. Plaintiff had until January 22, 2018, to object to the R&R. To date, no objection has been filed.¹

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

¹Plaintiff had objected to the original Report and Recommendation, asking the Magistrate Judge to correct an apparent clerical error. (ECF No. 385.) The R&R was amended to correct the clerical error. (ECF No. 387 at 1 n. 1.)

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

11 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
12 determine whether to adopt Magistrate Judge Cooke's R&R. The Magistrate Judge
13 recommends granting Defendants' Motion as to Plaintiff's state law claims against
14 Defendants in their official capacity and denying as to Plaintiff's remaining claims. Upon
15 reviewing the R&R and underlying briefs, this Court finds good cause to adopt the
16 Magistrate Judge's R&R in full.

17 It is therefore ordered, adjudged and decreed that the Report and
18 Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 387) is accepted and
19 adopted in its entirety.

20 It is ordered Defendants' motion for summary judgment (ECF No. 342) is granted
21 as to Plaintiff's state law claims against Defendants in their official capacity, including
22 any claims where Plaintiff seeks to hold the State of Nevada or the Nevada Department
23 of Corrections liable for Defendants' alleged conduct.

24 It is further ordered that Defendants' motion for summary judgment (ECF No. 342)
25 is denied as to Plaintiff's remaining claims.

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1 It is further ordered that Defendants' motion to seal certain exhibits containing
2 Plaintiff's medical records (ECF No. 370) is granted.

3 DATED THIS 8th day of February 2018.

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7 MIRANDA M. DU
8 UNITED STATES DISTRICT JUDGE
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