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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOSEPH L. MIZZONI,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 3:15-cv-00499-MMD-VPC

ORDER REGARDING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

I. SUMMARY

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 139) (“R&R”) relating to Defendants’ Motion for Summary Judgment (“Defendants’ Motion”) (ECF No. 118).¹ Plaintiff filed his objection to the R&R on April 2, 2018 (ECF No. 143), Defendants filed their response thereto on April 10, 2018 (ECF No. 144). The Court accepts and adopts the R&R.

II. BACKGROUND

Plaintiff is an inmate in the custody of the Nevada Department of Corrections (“NDOC”). This matter concerns events that occurred while Plaintiff was housed at Northern Nevada Correctional Center (“NNDC”). Following screening pursuant to 28 U.S.C. § 1915(a), the Court permitted Plaintiff to proceed on his Fourteenth Amendment

¹Additionally before the Court is Plaintiff’s Motion for Leave. (ECF No. 136.) In the motion, Plaintiff requests that the Court allows him to re-file his reply related to a previously issued R&R (ECF No. 112), and for the Court to reconsider its related order striking his previously submitted reply (ECF No. 135). (See ECF No. 136 at 2, 4.) Plaintiff filed the motion for leave after this Court issued the order which accepts and adopts the relevant R&R in full. The Court denies the motion for leave as moot. Moreover, the issues decided in connection with the previous R&R were sufficiently briefed.

1 due process claims against Defendants Smith and Brannon. (ECF No. 10 at 7.)
2 Plaintiff's allegations and Defendants' responses are explained in detail in the R&R,
3 which this Court adopts.

4 **III. LEGAL STANDARD**

5 **A. Review of the Magistrate Judge's Recommendations**

6 This Court "may accept, reject, or modify, in whole or in part, the findings or
7 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
8 timely objects to a magistrate judge's report and recommendation, then the court is
9 required to "make a *de novo* determination of those portions of the [report and
10 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails
11 to object, however, the court is not required to conduct "any review at all . . . of any issue
12 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
13 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
14 magistrate judge's report and recommendation where no objections have been filed. See
15 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
16 of review employed by the district court when reviewing a report and recommendation to
17 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
18 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
19 view that district courts are not required to review "any issue that is not the subject of an
20 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
21 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
22 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
23 which no objection was filed).

24 In light of Plaintiff's objection to the Magistrate Judge's R&R, this Court finds it
25 appropriate to engage in a *de novo* review to determine whether to adopt Magistrate
26 Judge Cobb's R&R.

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1 **B. Summary Judgment Standard**

2 “The purpose of summary judgment is to avoid unnecessary trials when there is
3 no dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,
4 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the
5 pleadings, the discovery and disclosure materials on file, and any affidavits “show there
6 is no genuine issue as to any material fact and that the movant is entitled to judgment as
7 a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is
8 “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-finder could
9 find for the nonmoving party and a dispute is “material” if it could affect the outcome of
10 the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49
11 (1986). Where reasonable minds could differ on the material facts at issue, however,
12 summary judgment is not appropriate. See *id.* at 250-51. “The amount of evidence
13 necessary to raise a genuine issue of material fact is enough ‘to require a jury or judge to
14 resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718
15 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank v. Cities Service Co.*, 391 U.S.
16 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts
17 and draws all inferences in the light most favorable to the nonmoving party. *Kaiser*
18 *Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

19 The moving party bears the burden of showing that there are no genuine issues
20 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once
21 the moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting
22 the motion to “set forth specific facts showing that there is a genuine issue for trial.”
23 *Anderson*, 477 U.S. at 256. The nonmoving party “may not rely on denials in the
24 pleadings but must produce specific evidence, through affidavits or admissible discovery
25 material, to show that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,
26 1409 (9th Cir. 1991), and “must do more than simply show that there is some
27 metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th
28 Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586

1 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s position
2 will be insufficient.” *Anderson*, 477 U.S. at 252.

3 **IV. DISCUSSION**

4 Upon considering the documents, events, and circumstances, underlying this
5 matter, the Magistrate Judge found that “Plaintiff does not implicate protected liberty
6 interest.” (ECF No. 139 at 14.) The Magistrate Judge concluded that Plaintiff therefore
7 cannot succeed on his procedural due process claims, and additionally declined to reach
8 the issue of whether the provided procedural protections were sufficient. (*Id.*) In short,
9 the Magistrate Judge recommends granting Defendants’ Motion.

10 This Court has conducted its *de novo* review in the case, and has fully considered
11 Plaintiff’s objection, Defendants’ response, the parties’ pleadings and memoranda, and
12 other relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and pertinent Local
13 Rules. The Court will briefly address Plaintiff’s objection to the R&R.

14 Plaintiff’s objection largely focuses on elucidating facts pertaining to Defendants’
15 use of force and Defendant’s failure to preserve, or make available, video evidence
16 which allegedly documents the underlying prison incident. (ECF No. 143 at 4-10.)
17 Plaintiff also objects to the Magistrate Judge’s decision not to consider his exhibits B, C,
18 and G. (*Id.* at 2-7.)

19 The Court considered each of Plaintiff’s contentions, and finds that the R&R
20 already addressed the issues upon which Plaintiff grounds his objection. See ECF No.
21 139 at 2, 6 (addressing the use of force dispute); *id.* at 3 (addressing the video storage
22 issue). Moreover, as to the video evidence, Defendant’s conduct does not go to the
23 legal viability of Plaintiff’s due process claims. As to the exhibits, the Magistrate Judge
24 notes that Defendant filed a motion to strike the exhibits as immaterial to Plaintiff’s
25 claims² and that the court issued a separate order denying that motion as moot. (ECF
26 No. 139 at 1.) However, the docket does not reflect that such order was filed at the time
27 when Plaintiff’s objection or Defendants’ response was filed. Nevertheless, the Court

28 ²ECF No. 125, errata at ECF Nos. 126, 126-1, 126-2, 126-3, 126-4, 126-5.

1 finds that these exhibits were not operative during the time Plaintiff's claims arose and
2 are not relevant to Plaintiff's claims.

3 To the extent Plaintiff discusses the relevant due process issue—condition or
4 hardship of confinement—Plaintiff essentially reiterates the same arguments raised in
5 opposition to Defendants' Motion, and which were addressed by the Magistrate Judge.
6 (*Compare* ECF No. 143 at 10-15 *with* ECF No. 123.) The Court agrees with the
7 Magistrate Judge's findings. Accordingly, the Court adopts the Magistrate Judge's R&R
8 in full.

9 **V. CONCLUSION**

10 It is therefore ordered that the Report and Recommendation of Magistrate Judge
11 William G. Cobb (ECF No. 139) is accepted and adopted in full.

12 It is further ordered that Defendants' Motion for Summary Judgment (ECF No.
13 118) is granted.

14 It is further ordered that Plaintiff's Motion for Leave (ECF No. 136) is denied. See
15 *supra* n.1.

16 It is further ordered that the Clerk enter judgment and close this case.

17 DATED THIS 15th day of June 2018.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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