UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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HUBERT W. DRAW, Plaintiff, v. DWIGHT NEVEN, *et al.*, Defendants.	Case No. 3:15-cv-00503-MMD-VPC ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE VALERIE P. COOKE

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 29) ("R&R") recommending the granting of Defendants' motion to dismiss or, in the alternative, motion for summary judgment ("Motion") (ECF No. 18). Plaintiff had until May 2, 2017 to object to the R&R. The Court subsequently granted Plaintiff an extension of time until July 28, 2017, to file an objection.[1] (ECF No. 39.) To date, no objection to the R&R has been filed.

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,

[1]Plaintiff had requested a stay of 15 months, which the Court denied. (ECF Nos. 36, 39.)

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

Nevertheless, this Court finds it appropriate to engage in a *de novo* review to determine whether to adopt Magistrate Judge Cooke's R&R. Upon reviewing the R&R and underlying briefs relating to Defendants' Motion, this Court agrees with the Magistrate Judge's finding that Plaintiff failed to exhaust available administrative remedies. Accordingly, the Court will accept and adopt the Magistrate Judge's R&R in full.

It is therefore ordered, adjudged and decreed that the Report and Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 29) is accepted and adopted in its entirety.

It is further ordered that Defendants' motion to dismiss or, in the alternative, for summary judgment (ECF No. 18) is granted. Plaintiff's claims are dismissed without prejudice based on his failure to exhaust his administrative remedies.

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

DATED THIS 9th day of August 2017.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE