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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 KEITH WARREN.,

Case No. 3:17-cv-00228-MMD-WGC

7 Plaintiff,

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
WILLIAM G. COBB

8 v.

9 C/O POWERS, *et al.*,

10 Defendants.

11 Plaintiff Keith Warren, an incarcerated person, brings this civil rights action
12 pursuant to 42 U.S.C. § 1983. Before the Court is a Report and Recommendation of United
13 States Magistrate Judge William G. Cobb (“R&R”). (ECF No. 46.) The R&R addresses
14 Plaintiff’s motion for leave to file a second amended complaint and the accompanying
15 complaint (“SAC”) (ECF Nos. 32, 32-1). (*Id.*)¹ The parties had until November 26, 2019,
16 to file objections to the R&R. No objection has been filed. The Court accepts and adopts
17 the R&R in its entirety.

18 This Court “may accept, reject, or modify, in whole or in part, the findings or
19 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). However, the
20 Court is not required to conduct “any review at all . . . of any issue that is not the subject
21 of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v.*
22 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
23 employed by the district court when reviewing a report and recommendation to which no
24 objections were made); *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003)
25 (reading the Ninth Circuit’s decision in *Reyna-Tapia* as adopting the view that district
26 courts are not required to review “any issue that is not the subject of an objection” and

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28 ¹The R&R explains the applicable legal and screening standards and recites Plaintiff’s factual allegations. (*See generally* ECF No. 46.)

1 accepting, without review, a magistrate judge’s recommendation to which no objection
2 was filed). The Court nonetheless engages in *de novo* review to determine whether to
3 accept the R&R and finds it should be accepted.

4 In the R&R, Judge Cobb concluded that permitting leave to amend is proper under
5 Fed. R. Civ. P. 15(a)(2). Upon screening the SAC, Judge Cobb found that Plaintiff’s three
6 claims are asserted under the Eighth Amendment for failure to protect—not also under the
7 Fourteenth Amendment as Plaintiff alleges (see ECF No. 32-1)—and the First Amendment
8 for retaliation. (*E.g.*, ECF No. 46 at 7, 12.) As to each named Defendant (see ECF No. 46
9 at 3 (listing all Defendants)) and the respective claims, Judge Cobb found as follows:

10 (1) *Count III* and Northern Nevada Correctional Center (“NNCC”) Caseworker R.
11 Mears, NNCC Warden Isidro Baca, Nevada Department of Corrections
12 (“NDOC”) Deputy Director D. Tristan, Lovelock Correctional Center (“LCC”) Caseworker
13 D. Baze, LCC Warden Renee Baker and Inspector General Pamela
14 Del Porto should be dismissed with prejudice for failure to state a claim. (ECF
15 No. 46 at 10–11; see ECF No. 32-1 at 14–15.) Dismissal is warranted because
16 Plaintiff’s allegations in this count against these Defendants relate to their
17 conduct within the grievance process to which Plaintiff has no due process
18 rights. See, *e.g.*, *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (citations
19 omitted) (“There is no legitimate claim of entitlement to a grievance
20 procedure.”); *Ramirez v. Galalap*, 334 F.3d 850, 560 (9th Cir. 2003) (“[I]nmates
21 lack a separate constitutional entitlement to a specific prison grievance
22 procedure.”).

23 (2) *Count I* should proceed against Warm Springs Correctional Center (“WSCC”) Warden
24 Quinten Byrne, WSCC Lieutenant Ramirez, WSCC Caseworker
25 Chandra Thomas, WSCC Correctional Officer Kelly, WSCC Correctional Officer
26 Powers, WSCC Gang Investigator/Officer Vidaurri and NDOC Deputy Director
27 SL Foster for failure to protect under the Eighth Amendment. (ECF No. 46 at 8–
28 9; see ECF No. 32-1 at 6–12.) Judge Cobb also found that in Count I Plaintiff

1 states a colorable claim for retaliation under the First Amendment against
2 Thomas. (ECF No. 46 at 9.)

3 (3) *Count II* should proceed against Powers, Vidaurri, Kelly and Thomas for
4 retaliation under the First Amendment. (*Id.* at 10; see ECF No. 32-1 at 13.)

5 The Court agrees with the R&R and adopts it in full.

6 It is therefore ordered, adjudged and decreed that the Report and Recommendation
7 of Magistrate Judge William G. Cobb (ECF No. 46) is accepted and adopted in its entirety.

8 It is further ordered that Plaintiff's motion for leave to file the SAC (ECF No. 32) is
9 granted.

10 It is further ordered that the Clerk of the Court file the SAC (ECF No. 32-1) and
11 send Plaintiff a courtesy copy.

12 It is further ordered that Count III and defendants Mears, Baca, Tristan, Baze, Baker
13 and Del Porto are dismissed with prejudice as amendment would be futile.

14 It is further ordered that Count I will proceed against Defendants Byrne, Foster,
15 Kelly, Powers, Ramirez, Thomas and Vidaurri for failure to protect in violation of the Eighth
16 Amendment.

17 It is further ordered that Counts I and II will proceed against Thomas based on
18 Plaintiff's claims of retaliation by Thomas under the First Amendment.

19 It is further ordered that Count II will also proceed against Kelly, Powers and
20 Vidaurri based on Plaintiff's allegations of retaliation by these Defendants under the First
21 Amendment.

22 It is further ordered that the Clerk of the Court electronically serve a copy of this
23 order and a copy of Plaintiff's SAC (ECF No. 32-1) on the Office of the Attorney General
24 of the State of Nevada, by adding the Attorney General to the docket sheet. This does not
25 indicate acceptance of service.

26 It is further ordered that the Attorney General's Office must advise the Court within
27 21 days of the date of the entry of this order whether it will enter a limited notice of
28 appearance on behalf of Defendants for the purpose of settlement. No defenses or

1 objections, including lack of service, will be waived as a result of the filing of the limited
2 notice of appearance. For those defendants for whom it does not accept service, the
3 Attorney General's Office must file the last known address under seal, but not serve the
4 inmate Plaintiff. If the last known address is a post office box, the Attorney General's Office
5 must attempt to obtain and provide the last known physical address.

6 It is further ordered that if service cannot be accepted for any of the named
7 Defendants, Plaintiff must file a motion identifying the unserved defendant(s), request
8 issuance of a summons, and provide the full name and address for those Defendants for
9 whom the Attorney General has not provided a last known address under seal.

10 It is further ordered that if the Attorney General accepts service for any named
11 Defendants, they must file and serve an answer or other response within 60 days from
12 when this order is issued.

13 DATED THIS 2nd day of December 2019.

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16 MIRANDA M. DU
17 CHIEF UNITED STATES DISTRICT JUDGE
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