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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

BRIT F. AUGBORNE, III,

Case No. 3:17-cv-00393-MMD-CBC

Plaintiff,

ORDER

v.

FILSON, et al.,

Defendants.

The Court previously screened Plaintiff's Complaint and allowed his single claim of excessive force to proceed. (ECF No. 11 at 6.) Plaintiff then filed a proposed First Amended Complaint ("FAC"), which Magistrate Judge Carla Baldwin Carry re-screened in a Report and Recommendation ("R&R") (ECF No. 27). Plaintiff had until May 2, 2019 to file an objection. (Id.) To date, no objection 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." *Id.* 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. 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

1 district courts are not required to review “any issue that is not the subject of an objection”).
2 Thus, if there is no objection to a magistrate judge’s recommendation, then the court may
3 accept the recommendation without review. See, e.g., Johnstone, 263 F. Supp. 2d at
4 1226 (accepting, without review, a magistrate judge’s recommendation to which no
5 objection was filed).

6 Nevertheless, this Court finds it appropriate to engage in a de novo review in order
7 to determine whether to adopt the R&R. Having reviewed the FAC, the Court agrees with
8 the R&R.

9 It is therefore ordered that Judge Carry’s Report and Recommendation (ECF No.
10 27) is adopted. Plaintiff will be permitted to proceed on the claims in the FAC as follows:
11 (1) Count I alleging violations of Plaintiff’s First Amendment right against retaliation and
12 Eighth Amendment right against excessive force against Defendant Officer Stolkz; (2)
13 Count II alleging conspiracy and a violation of the Eighth Amendment duty to protect
14 against Defendants Sgt. Homan and John Does numbers one through ten; (3) the portion
15 of Count III alleging supervisory liability against Defendant NDOC Director Dzurenda; (4)
16 Count IV alleging supervisory liability against Defendant Warden Filson; and (5) Count V
17 alleging supervisory liability against John Doe Associate Warden of Operations. The
18 portion of Count III alleging a First Amendment retaliation claim against Defendant
19 Dzurenda is dismissed without prejudice.

20 DATED THIS 8th day of May 2019.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE