

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

TERRIA McKNIGHT,

Plaintiff,

v.

NEVADA DEPARTMENT OF HEALTH  
AND HUMAN SERVICES DIVISION OF  
WELFARE AND SUPPORTIVE  
SERVICES ADMINISTRATIVE  
ADJUDICATION OFFICE, et al.,

Defendants.

Case No. 3:17-cv-00483-MMD-CBC

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 10) (“R&R”) relating to the screening of Plaintiff’s pro se Amended Complaint (ECF No. 7).<sup>1</sup> Judge Cooke recommended: (1) dismissing Plaintiff’s Fourteenth Amendment claim against individual officers with the Division of Welfare and Supportive Services (“DWSS”) (as alleged in Count I); (2) permitting Plaintiff to proceed on her ADA Title II claim (as alleged in Count II); and dismissing Plaintiff’s breach of contract claim (Count III) with prejudice. (ECF No. 10.) Plaintiff filed an objection (“Objection”) (ECF No. 11), as well as a document titled “Amendment of Count I” (“Amendment”) (ECF No. 12). For the reasons stated below, the Court overrules Plaintiff’s Objection.

---

<sup>1</sup>The Court previously screened Plaintiff’s initial complaint and granted her leave to amend. (ECF No. 5.)

1 This Court “may accept, reject, or modify, in whole or in part, the findings or  
2 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where a  
3 party timely objects to a magistrate judge’s report and recommendation, then the court is  
4 required to “make a de novo determination of those portions of the [report and  
5 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1)(C). Where a party  
6 fails to object, however, the court is not required to conduct “any review at all . . . of any  
7 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).  
8 Indeed, the Ninth Circuit has recognized that a district court is not required to review a  
9 magistrate judge’s report and recommendation where no objections have been filed. See  
10 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9th Cir. 2003) (disregarding the  
11 standard of review employed by the district court when reviewing a report and  
12 recommendation to which no objections were made); see also *Schmidt v. Johnstone*,  
13 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in  
14 *Reyna-Tapia* as adopting the view that district courts are not required to review “any  
15 issue that is not the subject of an objection.”). Thus, if there is no objection to a  
16 magistrate judge’s recommendation, then the court may accept the recommendation  
17 without review. See, e.g., *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without  
18 review, a magistrate judge’s recommendation to which no objection was filed).

19 Plaintiff does not object to the Magistrate Judge’s recommendation as to  
20 dismissal of Count I with leave to amend.<sup>2</sup> The Court agrees with the recommendation  
21 and will adopt it.

22 Plaintiff argues in her Objection that the Court should not dismiss her breach of  
23 contract claim. While Plaintiff’s arguments are difficult to decipher, she appears to argue

---

24 <sup>2</sup>In fact, Plaintiff submitted her amendment of Count I. (ECF No. 12.) However,  
25 the Amendment is improper in that it relates only to Count I. Because an amended  
26 complaint supersedes a prior complaint, Plaintiff must file a second amended complaint  
27 that incorporates her amendment as to Count I, not a stand alone Amendment. See *Hal*  
28 *Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989)  
(holding that “[t]he fact that a party was named in the original complaint is irrelevant; an  
amended pleading supersedes the original”). The Court will therefore strike the  
Amendment.

1 that her breach of contract claim is an attempt to enforce rights under 7 C.F.R. § 273.15,  
2 including a right to require DWSS to act in good faith. (See ECF No. 11.) Plaintiff cites to  
3 cases addressing a breach of the implied covenant of good faith and fair dealing. (See  
4 id. at 2.) However, a claim for contractual breach of the implied covenant of good faith  
5 and fair dealing requires the existence of an agreement between the parties. See Hilton  
6 Hotels v. Butch Lewis Prods., Inc., 808 P.2d 919, 923 (Nev. 1991) (stating that a cause  
7 of action for breach of the covenant of good faith and fair dealing requires an an element  
8 that the parties were parties to an agreement). Plaintiffs' allegations do not show the  
9 existence of an enforceable agreement to support her breach of contract claim in Count  
10 III, let alone a breach of the covenant of good faith and fair dealing implicit in such a  
11 agreement. The Court therefore overrules Plaintiff's Objection.

12 It is therefore ordered, adjudged and decreed that the Report and  
13 Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 10) is accepted and  
14 adopted in full. Plaintiff's Fourteenth Amendment claim (Count I) is dismissed without  
15 prejudice and with leave to amend. Plaintiff may proceed on her ADA Title II claim  
16 (Count II). Plaintiff's breach of contract claim (Count III) is dismissed with prejudice.

17 If Plaintiff chooses to file a second amended complaint curing the deficiencies as  
18 to Count I, as outlined in the R&R, Plaintiff must file the amended complaint within thirty  
19 (30) days from date of entry of this order. If Plaintiff chooses not to file a second  
20 amended complaint within thirty (30) days, the Court will dismiss Count I with prejudice  
21 and the case will proceed on Count II.

22  
23 DATED THIS 25<sup>th</sup> day of September 2018.

24  
25 

26 

---

MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE  
28