

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JUAN SOLIS,

Plaintiff,

v.

ROBERT WALKER, et al.,

Defendants.

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Case No. 6:17-cv-116-JDK-JDL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Juan Solis, proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for disposition. This case is hereby **REOPENED** for all purposes.

In his second amended complaint, Plaintiff asserted that prison officials were deliberately indifferent to his safety. Docket No. 34. Five of the Defendants moved to dismiss the second amended complaint. Docket No. 54. Plaintiff did not respond to the motion to dismiss despite being granted two extensions of time to do so. Docket Nos. 60, 63.

On August 3, 2018, Judge Love issued a Report recommending that the Court grant Defendants’ motion to dismiss and dismiss the claims in the second amended complaint with prejudice. Docket No. 64 at 19. The Magistrate Judge also recommended that the Court dismiss the claims Plaintiff asserted in a supplemental complaint attached to his second amended complaint (Docket Nos. 34-1, 34-2), which

were not addressed in the motion to dismiss, without prejudice as frivolous. Docket No. 64 at 19.

Shortly after the Report issued, Plaintiff moved to continue the case (Docket No. 65) and for an extension of time to respond to the Report (Docket No. 67). Based on allegations of injuries sustained during a use of force on May 19, 2018, the Court administratively closed the case on September 12, 2018, until Plaintiff was ready to proceed. Docket No. 68. Plaintiff was ordered to provide status updates to the Court every ninety days until he was ready to reopen the case. *Id.* at 2. Additionally, Plaintiff was warned that failure to do so would result in the case being dismissed without further notice. *Id.*

Despite the passage of over thirty months, Plaintiff has not provided a single required status update. Rather, Plaintiff's only contact with the Court since the administrative closing was a motion for free copies (Docket No. 69), a notice of change of address (Docket No. 71), and a motion to waive copying costs (Docket No. 72), all filed in late 2018. Since December 2018, Plaintiff has not contacted the Court in any way. Further, TDCJ records show Plaintiff was released on May 8, 2019. Plaintiff has not provided a current mailing address or advised the Court of his whereabouts.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc),

superseded on other grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Plaintiff has failed to prosecute his case and has not complied with the Court's order directing him to furnish regular status updates regarding his readiness to proceed. Plaintiff was advised that the failure to do so would result in the adoption of the Magistrate Judge's Report and the dismissal of the case without further notice.

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 64) as the findings of this Court. It is therefore **ORDERED** that Defendants' motion to dismiss (Docket No. 54) is **GRANTED** and that the claims in Plaintiff's second amended complaint (Docket No. 34) are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. Further, the claims in Plaintiff's supplemental complaint (Docket Nos. 34-1 & 34-2), covering the period between April and October of 2017, are **DISMISSED WITHOUT PREJUDICE** as frivolous and for failure to state a claim

upon which relief may be granted. Because this dismissal could effectively operate as a dismissal with prejudice due to the statute of limitations, the Court hereby **SUSPENDS** the statute of limitations on the claims in the supplemental complaint for a period of ninety days following entry of final judgment.

So **ORDERED** and **SIGNED** this **27th** day of **April, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE