

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

TYLER DIVISION

VINCENT CASARES, #1850085

§

VS.

§

CIVIL ACTION NO. 6:17cv701

DR. LINTHICUM, ET AL.

§

MEMORANDUM OPINION ADOPTING THE REPORT
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Vincent Casares, an inmate confined at the Eastham Unit within the Texas Department of Criminal Justice, (TDCJ), proceeding *pro se* and *in forma pauperis*, filed this above-styled and numbered civil rights lawsuit. The complaint was referred to the United States Magistrate Judge, the Honorable K. Nicole Mitchell for findings of fact, conclusions of law and recommendations for the disposition of the case.

On January 7, 2019, Judge Mitchell issued a Report, (Dkt. #36), recommending that Plaintiff's motion for leave to amend his complaint be granted and that his filed amended complaint, (Dkt. #31), be the operative pleading. She also recommended that, in light of Plaintiff's amended complaint, Defendants' motion to dismiss and motion for summary judgment based on exhaustion be denied as moot. A copy of this Report was sent to both parties. The docket illustrates that Plaintiff received a copy of the Report on January 11, 2019, (Dkt. #37). However, to date, no objections to the Report have been filed.

Because no objections were filed, the parties are barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions

accepted and adopted by the district court. *Douglass v. United Services Auto. Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

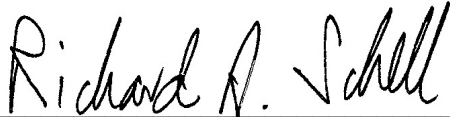
The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #36), is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that Plaintiff’s motion for leave to amend his complaint, (Dkt. #30), is **GRANTED**. Plaintiff’s filed amended complaint, (Dkt. #31), is the operative pleading in this case. Additionally, it is

ORDERED that, in light of Plaintiff’s amended complaint, Defendants’ motions to dismiss, (Dkt. #'s 13, 16, 18), as well as Defendants’ motion for summary judgment, (Dkt. #29), are **DENIED** as moot—subject to reurgance if appropriate.

SIGNED this the 11th day of February, 2019.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE