with the recommendation of the Magistrate Judge.

IT IS ORDERED that (1) the Report and Recommendation is adopted; (2) the § 1983 claim is dismissed; and (3) the reference to the Magistrate Judge is vacated (see General Order 05-07 at 8).

DATED: February 26, 2010 CORMAC J. CARNEY

UNITED STATES DISTRICT JUDGE

19

20

21

22

23

24

25

26

27