

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**

EASTERN DISTRICT OF CALIFORNIA

DANIEL R. PEREZ,

Plaintiff,

v.

KEN CLARK, et. al.,

Defendants.

CASE NO. 1:08-cv-00466-OWW-SMS (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, AND DISMISSING  
CLAIMS AGAINST DEFENDANT C. MUNOZ  
WITHOUT PREJUDICE

(Docs. 29, 39, and 47)

Plaintiff, Daniel R. Perez, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On March 24, 2010, the Magistrate Judge filed a Findings and Recommendations herein which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty days. On April 29, 2010, Plaintiff filed objections. Defendants have not filed objections.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and proper analysis.

Accordingly, the Court HEREBY ORDERS:

1. The Findings and Recommendations, filed March 24, 2010, is adopted in full;
2. Defendant Munoz’s un-enumerated 12b Motion to Dismiss for failure to exhaust

1 administrative remedies, filed September 11, 2009, is GRANTED; and

2 3. Plaintiff's claims against Defendant Munoz are dismissed without prejudice,  
3 pursuant to 42 U.S.C. sect 1997e(a).

4  
5 **IT IS SO ORDERED.**

6 **Dated: May 4, 2010**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28