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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ISIDRO ROMAN,

Plaintiff,

vs.

DERRAL G. ADAMS, Warden, et al.,

Defendant.

CASE NO. 07 CV 1343 JLS (POR)

**ORDER ADOPTING
MAGISTRATE JUDGE PORTER'S
REPORT AND
RECOMMENDATIONS OF
DEFENDANTS' MOTION TO
DISMISS AND PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

(Doc. Nos. 70, 78, 88, 89.)

Plaintiff Isidro Roman, a prisoner proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983 against various Defendants. Plaintiff complains of events which allegedly occurred while he was incarcerated at Calipatria State Prison and Kern Valley State Prison. His Third Amended Complaint asserts causes of actions for violations of his First Amendment right to be free from retaliation; Sixth Amendment right to confront his accusers; Fourteenth Amendment right to due process; and Eighth Amendment right to be free from cruel and unusual punishment.

On September 4, 2009, Defendants filed a motion to dismiss Plaintiff's Third Amended Complaint. (Doc. No. 70.) Plaintiff filed an opposition to this motion on November 23, 2009 (Doc. No. 76), and Defendants did not file a reply. On December 4, 2009, Plaintiff filed a motion for summary judgment. (Doc. No. 78.) Defendants filed a response in opposition on February 5, 2010 and Plaintiff filed a reply on February 24, 2010. (Doc. Nos. 81, 83.)

1 Magistrate Judge Porter issued a Report and Recommendation (“R&R”) as to both the motion
2 to dismiss and the motion for summary judgment on June 24, 2010 and June 25, 2010, respectively.
3 (Doc. Nos. 88, 89.) Magistrate Judge Porter recommended this Court grant in part and deny in part
4 Defendants’ motion to dismiss. (Doc. No. 88.) In doing so, the only remaining causes of action would
5 be:

6 (1) First Amendment Claim for Retaliation against Defendants Rush,
7 Barajas, Ibarra, Alderete, Lopez, Gonzalez, Rodriguez-Toledo, Martinez, Hernandez,
8 Teeters, Nutt, and Rodiles; and

9 (2) Eighth Amendment Claim for Excessive Force against Defendants Martinez,
10 Hernandez, Teeters, Nutt, Rodiles, and Barajas.

11 (*Id.* at 20.) All other claims would be dismissed without leave to amend, except for Plaintiff’s due
12 process claim and request for injunctive relief which were recommended to be dismissed without
13 prejudice. (*Id.* at 19-20.) Magistrate Judge Porter further recommended this Court deny Plaintiff’s
14 motion for summary judgment without prejudice. (Doc. No. 89.)

15 Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set forth the
16 duties of a district court in connection with a magistrate judge’s report and recommendation. “The
17 district court must make a *de novo* determination of those portions of the report . . . to which
18 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or
19 recommendations made by the magistrate.” 28 U.S.C. 636(b)(1)(c); *see also United States v.*
20 *Remsing*, 874 F.2d 614, 617 (9th Cir. 1989); *United States v. Raddatz*, 447 U.S. 667, 676 (1980).
21 However, in the absence of timely objection, the Court need “only satisfy itself that there is no
22 clear error on the face of the record.” Fed. R. Civ. P. 72, Advisory Committee Notes (1983)
(citing *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

23 In this case, Plaintiff has failed to timely file objections to both of Magistrate Judge
24 Porter’s R&Rs, which were due on or before July 16, 2010. Having reviewed the R&Rs, the Court
25 finds that it is thorough, well reasoned, and contains no clear error. Therefore, the Court adopts
26 both R&Rs in full.

27 The Court hereby:

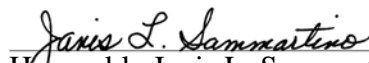
28 (1) **ADOPTS** Magistrate Judge Porter’s Report and Recommendation on both Defendants’
motion to dismiss and Plaintiff’s motion for summary judgment,

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- (2) **GRANTS IN PART** and **DENIES IN PART** Defendants’ motion to dismiss,
- (3) **DENIES** Plaintiff’s motion for summary judgment; and
- (4) **GRANTS** leave to amend those claims which are dismissed without prejudice.

Plaintiff may file a Fourth Amended Complaint curing the deficiencies stated in Magistrate Judge Porter’s R&R on the motion to dismiss within 45 days of the date this Order is electronically docketed.

DATED: August 5, 2010



Honorable Janis L. Sammartino
United States District Judge