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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOE L. McKENNEY, JR.,)	Civil No. 07cv1735-L(POR)
)	
Plaintiff,)	ORDER ADOPTING REPORT AND
)	RECOMMENDATION AND
v.)	DENYING DEFENDANTS' MOTION
)	TO DISMISS PLAINTIFF'S EIGHTH
R. HERNANDEZ <i>et al.</i> ,)	AMENDMENT CLAIM
)	
Defendants.)	
_____)	

Plaintiff Joe L. McKenney, Jr., a state prisoner proceeding *pro se* and *in forma pauperis*, filed this action under 42 U.S.C. § 1983 alleging numerous constitutional violations under the Eighth Amendment, First Amendment and the Due Process Clause. The case was referred to United States Magistrate Judge Louisa S. Porter for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.3.


In the first amended complaint, the operative complaint in this action, Plaintiff alleged Eighth Amendment claims based on excessive force, deliberate indifference to safety and deprivation of outdoor recreation, and a First Amendment claim for denial of meaningful access to the courts. Defendants moved to dismiss the Eighth Amendment claim for deprivation of outdoor exercise based on failure to exhaust administrative remedies. The Magistrate Judge issued a Report and Recommendation, recommending Defendants' motion to dismiss be denied. Defendants filed no objections.

1 A district judge may accept, reject, or modify the recommended decision on a dispositive
2 matter prepared by a magistrate judge proceeding without the consent of the parties for all
3 purposes. Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). “The court shall make a *de novo*
4 determination of those portions of the [report and recommendation] to which objection is
5 made.” 28 U.S.C. § 636(b)(1). Section 636(b)(1) does not require some lesser review by the
6 district court when no objections are filed. *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). The
7 “statute makes it clear that the district judge must review the magistrate judge’s findings and
8 recommendations *de novo if objection is made, but not otherwise.*” *United States v.*
9 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in the original); *see*
10 *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003).

11 In the absence of any objections, the court **ADOPTS** the Report and Recommendation.
12 Defendants’ motion to dismiss is hereby **DENIED**.

13 **IT IS SO ORDERED.**

14
15 DATED: June 15, 2011

16 
17 M. James Lorenz
18 United States District Court Judge

19 COPY TO:

20 HON. LOUISA S. PORTER
21 UNITED STATES MAGISTRATE JUDGE

22 ALL PARTIES/COUNSEL
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