

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  
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID EARL PARMER,  
  
vs.  
  
ALVAREZ, BADGE #75127; CUEVAS-  
PEDRO,  
  
Defendants.

CASE NO. 09cv00412-DMS (NLS)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION OF  
MAGISTRATE JUDGE**

[Docket Nos. 33, 35]

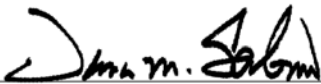
Plaintiff, a state prisoner proceeding *pro se* and *in forma pauperis*, brought this action for violations of his civil rights under 42 U.S.C. § 1983. The suit arises out of allegations that the correctional officers violated his Eighth Amendment right to be free from cruel and unusual punishment when they used excessive force against him. On April 27, 2010, Defendants filed a motion to dismiss Plaintiff’s Second Amended Complaint (“SAC”). (Doc. 33.) Defendants contend: (1) they are entitled to qualified immunity; (2) Plaintiff failed to timely file the SAC; (3) the SAC failed to state a claim upon which relief can be granted; and (4) Plaintiff did not exhaust his administrative remedies. (Doc. 33 at 1-2.) On August 24, 2010, Magistrate Judge Victor E. Bianchini

1 issued a Report and Recommendation (“R&R”) recommending Defendants’ motion to dismiss be  
2 granted. Plaintiff did not file any objections to the R&R or to Defendants’ motion.

3           When no objections are filed, the court may assume the correctness of the magistrate judge’s  
4 findings of fact and decide the motion on the applicable law. *Campbell v. United States Dist. Court*,  
5 501 F. 2d 196, 201 (9<sup>th</sup> Cir. 1974); *Johnson v. Nelson*, 142 F. Supp. 2d 1215, 1217 (S.D. Cal. 2001).  
6 After a full review, the Court adopts the Magistrate Judge’s recommendation in full and GRANTS  
7 Defendants’ motion to dismiss. Plaintiff’s SAC is dismissed without prejudice and without leave to  
8 amend.

9           **IT IS SO ORDERED.**

10 DATED: October 15, 2010



11 \_\_\_\_\_  
12 HON. DANA M. SABRAW  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28