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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 HOWARD YOUNG,

12 Plaintiff,

13 vs.

14 LARRY SMALLS, *et al.*,

15 Defendants.

Case No. 09cv2545 DMS (JMA)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DENYING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

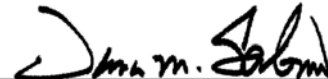
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17 Plaintiff Howard Young, a state prisoner proceeding *pro se*, filed an action pursuant to 42  
18 U.S.C. Section 1983 alleging violation of his constitutional rights. The case was referred to United  
19 States Magistrate Judge Jan M. Adler for a report and recommendation in accordance with 28 U.S.C.  
20 Section 636(b)(1)(B) and Civil Local Rule 72.3. Plaintiff filed a motion for summary judgment,  
21 which Defendants opposed. On March 2, 2012, the Magistrate Judge issued a Report and  
22 Recommendation, recommending to deny Plaintiff's motion pursuant to Federal Rule of Civil  
23 Procedure 56(d) without prejudice to refiling after the United States District Court for the Eastern  
24 District of California had the opportunity to rule on Plaintiff's motion to quash subpoenas and  
25 Defendants have conducted discovery necessary to oppose the motion.

26 In reviewing a magistrate judge's report and recommendation, the district court "shall make  
27 a *de novo* determination of those portions of the report . . . to which objection is made," and "may  
28 accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate

1 judge." 28 U.S.C. § 636(b)(1). Plaintiff's objections to the Report and Recommendation are  
2 **OVERRULED** and the Report and Recommendation is **ADOPTED**. Plaintiff's motion for summary  
3 judgment is **DENIED WITHOUT PREJUDICE** for the reasons stated in the Report and  
4 Recommendation.

5 **IT IS SO ORDERED.**

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7 DATED: April 3, 2012



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9 HON. DANA M. SABRAW  
10 United States District Judge  
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