

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE M. PASION,
Plaintiff,
v.
JOHN A. HAVILAND, et al.,
Defendants.

No. 2:10-cv-3227 TLN AC P

ORDER

Plaintiff, a state prisoner proceeding through counsel, 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 302.

On January 7, 2016, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 109.) Defendant has filed objections to the findings and recommendations (ECF No. 110) and Plaintiff has responded (ECF No. 111).


In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, 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 by proper analysis.

1 The Court does not find Defendant’s argument that “the Magistrate Judge collapsed the
2 constitutional inquiry into the qualified immunity inquiry” compelling. (ECF No. 110 at 1.) The
3 Magistrate Judge performed a thorough analysis of both prongs of the qualified immunity
4 framework and properly determined that a clearly established right against retaliatory punishment
5 existed at the time and that in the circumstances of this case (an alleged First Amendment
6 retaliation claim) consideration of Defendant’s motive is applicable to the qualified immunity
7 analysis.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The findings and recommendations filed January 7, 2016 (ECF No. 109), are adopted
10 in full; and
11 2. Defendant Cappel’s motion for summary judgment (ECF No. 83) is denied.

12
13 Dated: March 31, 2016

14
15 
16 _____
17 Troy L. Nunley
18 United States District Judge
19
20
21
22
23
24
25
26
27
28