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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 PAUL DENHAM,

12 Plaintiff,

13 vs.

14 ARANDA, et al. ,

15 Defendant.

CASE NO. 09cv1505 JLS (WVG)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

(Doc. Nos. 39, 42.)

16 Presently before the Court is Defendants' J. Hernandez, E. Contreras, E. Marrero, P.  
17 Cortez, K. Smith, and Matt Cate's<sup>1</sup> motion to dismiss Plaintiff's first amended complaint. (Doc.  
18 No. 39.) Also before the Court is Magistrate Judge Gallo's report and recommendation,  
19 recommending the Court grant Defendants' motion in part and deny the motion in part. (Doc. No.  
20 42.)

21 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court's  
22 duties in connection with a magistrate judge's report and recommendation. The district court must  
23 "make a de novo determination of those portions of the report to which objection is made," and  
24 "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the  
25 magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76  
26 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of  
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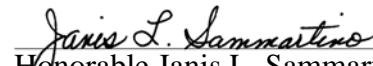
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<sup>1</sup>These are the only defendants that have been served.

1 timely objection, the Court “need only satisfy itself that there is no clear error on the face of the  
2 record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note  
3 (citing *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

4 Here, neither party has timely file objections to the report and recommendation. Having  
5 reviewed it, the Court finds that it is thorough, well reasoned, and contains no clear error.  
6 Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge Gallo’s report and  
7 recommendation; (2) **GRANTS WITH PREJUDICE** Defendants’ motion to dismiss with regard  
8 to Plaintiff’s Eighth Amendment claim and qualified immunity for Hernandez, Smith, and Cate;  
9 (3) and **DENIES** Defendants’ motion to dismiss with regard to Plaintiff’s retaliation claim against  
10 Marrero, Cortez, and Contreras, and qualified immunity for the three aforementioned parties. In  
11 short, Plaintiff’s retaliation claim survives against Marrero, Cortez, and Contreras.

12 **IT IS SO ORDERED.**

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14 DATED: February 4, 2011

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16 Honorable Janis L. Sammartino  
17 United States District Judge  
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