UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL LYDELL BURGERS, Plaintiff, vs. DOMINGO URIBE JR., et al., Defendants.	CASE NO. 13cv1880 DMS (NLS) **ORDER (1) ADOPTING REPORT AND RECOMMENDATION, (2) GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS AND (3) GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

On August 12, 2013, Plaintiff Michael Lydell Burgers ("Plaintiff"), a state prisoner proceeding *pro se*, filed a Complaint Under the Civil Rights Act 42 U.S.C. § 1983. Plaintiff alleges Defendants violated his First Amendment right to freedom of speech, Fifth Amendment right to due process, Fourteenth Amendment rights to due process and equal protection and retaliated against him for exercising his First Amendment rights.

On August 7, 2014, Magistrate Judge Nita L. Stormes issued a Report and Recommendation ("R&R"), recommending that the Court grant in part and deny in part Defendants' motion to dismiss the Complaint due to Plaintiff's failure to state a claim, and grant Defendants' motion for partial summary judgment. This Court, having reviewed *de novo* the Magistrate Judge's R&R, and there being no objections filed thereto, adopts the R&R in its entirety. Defendants' motion to dismiss is hereby granted

in part and denied in part. Specifically, Defendants' motion to dismiss is granted with respect to Plaintiff's Fifth Amendment claim, Fourteenth Amendment equal protection claim and Fourteenth Amendment due process claim as it relates to the sixteen photographs and one catalog that were not confiscated. Defendants' motion is denied with respect to Plaintiff's retaliation claim and his Fourteenth Amendment due process claim relating to the four photographs and one catalog that were confiscated. The Court also grants Defendants' motion for partial summary judgment of no exhaustion on Plaintiff's Fourteenth Amendment due process claim as it relates to the sixteen photographs and one catalog that were not confiscated.

Pursuant to Federal Rule of Civil Procedure 12(a)(1)(C), Defendants shall file their Answer to the Complaint within 21 days of the filing of this Order.

IT IS SO ORDERED.

DATED: September 15, 2014

HON. DANA M. SABRAW
United States District Judge