

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

David St. Ann,

Plaintiff,

Case No. 15-cv-11770

v.

Judith E. Levy

United States District Judge

Todd McLean, *et al.*,

Mag. Judge Anthony P. Patti

Defendants.

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**SECOND AMENDED ORDER ADOPTING MAGISTRATE JUDGE
PATTI'S REPORT AND RECOMMENDATION [58]**

On January 3, 2018, Magistrate Judge Anthony P. Patti issued a Report and Recommendation (Dkt. 58) recommending that the Court grant in part and deny in part defendants' motion for summary judgment. (Dkt. 48.) Magistrate Judge Patti recommends that the Court dismiss with prejudice plaintiff's claims regarding a constitutional right to a particular security classification, dismiss without prejudice plaintiff's claims against defendant Buczek for failure to exhaust his administrative remedies, and not dismiss plaintiff's

claims for retaliation and intentional infliction of emotional distress.
(Dkt. 58 at 17-18.)

The parties were required to file specific written objections within 14 days of service, or by January 17, 2018. Fed. R. Civ. P. 72(b)(2); E.D. Mich. L.R. 72.1(d). On January 25, 2018, plaintiff filed an objection to the dismissal without prejudice of his claims against defendant Buczek. (Dkt. 61.) Although dated January 16, 2018, the objection was not mailed until January 22, 2018 (Dkt. 61 at 21), and is therefore untimely. The Court also notes that plaintiff's claims against Buczek will be denied without prejudice, and so plaintiff may assert those claims in another lawsuit if he can show he has exhausted his administrative remedies.

The Court has thoroughly reviewed the Report and Recommendation, and concurs in the reasoning and result. Accordingly, it is hereby ordered that:

The Court's prior adoption of the Report and Recommendation (Dkt. 60) is WITHDRAWN;

The Report and Recommendation is ADOPTED;

Defendants' motion for summary judgment (Dkt. 48) is GRANTED
IN PART AND DENIED IN PART;

Plaintiff's claims asserting a constitutional right to a particular
security classification are DISMISSED WITH PREJUDICE;

Plaintiff's claims against defendant Buczek are DISMISSED
WITHOUT PREJUDICE; and

Plaintiff's claims for retaliation and intentional infliction of
emotional distress are NOT DISMISSED.

IT IS SO ORDERED.

Dated: January 29, 2018
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served
upon counsel of record and any unrepresented parties via the Court's
ECF System to their respective email or First Class U.S. mail addresses
disclosed on the Notice of Electronic Filing on January 29, 2018.

s/Shawna Burns
SHAWNA BURNS
Case Manager