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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SAMUEL FLORES,)	3:11-cv-00236-HDM-VPC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
STATE OF NEVADA, IN RELATION TO)	
THE NEVADA DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	
)	

Before the court is the report and recommendation of the United States Magistrate Judge (#39) filed on February 7, 2012. In the report and recommendation, the magistrate judge recommends that this court enter an order denying the plaintiff's motion to strike (#26) and an order granting the defendant's motion for summary judgment (#12). Plaintiff objected to the magistrate judge's report and recommendation (#40), defendant responded (#43) and

1 plaintiff replied (#44). The court has considered the pleadings
2 and memoranda of the parties and other relevant matters of record.
3 It has made a review and determination in accordance with the
4 requirements of 28 U.S.C. § 636 and applicable case law.

5 Accordingly:

6 The court accepts and adopts the magistrate judge's report and
7 recommendation that plaintiff's motion to strike be denied.

8 Furthermore, the court accepts and adopts, in part, the
9 magistrate judge's report and recommendation that defendant's
10 motion for summary judgment be granted.¹ The Ninth Circuit has
11 held that under section 1983, a plaintiff must demonstrate that the
12 defendant personally participated in the deprivation of his
13 constitutional rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th
14 Cir. 2002). The court concludes that the plaintiff has failed to
15 raise a genuine issue of material fact as to whether defendant
16 McDaniel personally participated in the alleged constitutional
17 violations, encouraged the alleged violations, authorized the
18 alleged violations, knew of the alleged violations and failed to
19 act to prevent them, or implemented a policy that was so deficient
20 that the policy itself was a constitutional violation or a moving
21 force of the alleged constitutional violations. See *Hansen v.*
22 *Black*, 885 F.2d 642, 646 (9th Cir. 1989).

23 Based on this review, and for good cause appearing, the court
24 hereby accepts and adopts that portion of the report and
25 recommendation of the magistrate judge on the grounds set forth

26

27 ¹ The court notes an error at page 5, line 24 of the magistrate judge's report
28 and recommendation. That line reads: "Here, the plaintiff does not oppose the
defendants' motion for summary judgment." Plaintiff, however, did oppose
defendant's motion for summary judgment (#20).

1 above. The plaintiff's motion to strike (#26) is therefore DENIED.
2 The defendant's motion for summary judgment (#12) is GRANTED based
3 on a failure to show that defendant McDaniel personally
4 participated in the alleged constitutional violations. The court
5 declines to address the remaining issues raised in defendant's
6 motion for summary judgment.

7 **IT IS SO ORDERED.**

8 DATED: This 15th day of March, 2012.

9
10 
11 UNITED STATES DISTRICT JUDGE