

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**JOHN EMMINGHAM,**

Plaintiff,

v.

**PER MICHAEL SELTZER, MICHAEL  
HATHAWAY, Counselor, Oregon State  
Penitentiary Minimum (OSPM),  
THOMAS WRIGHT, Facility Manager,  
OSMP, CARLA TUPOU, Assistant  
Superintendent, OSCI, R. OGDEN,  
Security Manager, OSCI, GREGORY  
HUNTER, Library Coordinator, OSCI,**

Defendants.

**MOSMAN, J.,**

On January 18, 2011, Magistrate Judge Hubel issued his Findings and Recommendation (“F&R”) [125] in the above-captioned case recommending that defendant Seltzer’s motion for summary judgment [80] be granted, and that the ODOC Defendants’ motion for summary judgment [46] be granted except as to plaintiff’s First Amendment retaliation claim. Plaintiff objected [131], as did the ODOC Defendants [146].

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court

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OPINION AND ORDER

is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Hubel's recommendation, and I ADOPT the F&R [125] as my own opinion.

IT IS SO ORDERED.

DATED this 19th day of May, 2011.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court