

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 08-cv-01841-LTB-BNB

SHANNON BASTEDENBECK,

Plaintiff,

v.

ARISTEDES W. ZAVARAS,
GARY GOLDER,
LARRY REID,
JAMES E. ABBOTT,
KENNETH MARTINEZ, and
JOHN O'ROURKE,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter is before me on the **Partial Motion to Dismiss from Defendants Zavaras, Golder, Reid, Abbott, and O'Rourke** [Doc. #12, filed 12/29/2008] (the "Motion"). I respectfully RECOMMEND that the Motion be GRANTED.

The plaintiff is suing the defendants in their individual and official capacities.¹ *Complaint*, p. 4. She seeks only monetary damages. *Id.* at p. 9. The defendants move to dismiss the official capacity claims against them based on Eleventh Amendment immunity. The plaintiff asserts that the parties have consulted and have agreed to dismissal of the official capacity claims without prejudice. *Response of Plaintiff to Partial Motion to Dismiss* [Doc. #19].

¹Defendants Colorado Department of Corrections, La Vista Correctional Facility, and Colorado Women's Correctional Facility have been dismissed from this lawsuit [Doc. #6].

I respectfully RECOMMEND that the Motion be GRANTED and that the claims against the defendants in their official capacities be DISMISSED WITHOUT PREJUDICE.

FURTHER, IT IS ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have 10 days after service of this recommendation to serve and file specific, written objections. A party's failure to serve and file specific, written objections waives *de novo* review of the recommendation by the district judge, Fed.R.Civ.P. 72(b); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. In re Key Energy Resources Inc., 230 F.3d 1197, 1199-1200 (10th Cir. 2000). A party's objections to this recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review. United States v. One Parcel of Real Property, 73 F.3d 1057, 1060 (10th Cir. 1996).

Dated August 13, 2009.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge