

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-02657-WYD-KMT

DAVID L. COLLINS,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS,
CORRECTIONS CORPORATION OF AMERICA,
ARISTEDES ZAVARAS,
MERYL DOHRMANN,
JAMES LANDER,
J. D. SCOLLARD,
MARISSA SCHNELL,
SWARTZ,
PUETT, and
SARGENT REDIESEL,

Defendants.

ORDER ADOPTING AND AFFIRMING MAGISTRATE JUDGE'S ORDERS

This matter is before the Court in connection with Defendant Corrections Corporation of America's ("CCA") Motion to Dismiss, filed April 13, 2009 [#41], and the Motion to Dismiss filed by the Colorado Department of Corrections ("CDOC") and Defendants Aristedes W. Zavaras, Meryl Dohrmann, James, Lander, Jerie Scolland, and Elizabeth Schwartz (collectively, the "State Defendants") on May 22, 2009 [#50]. These motions were referred to Magistrate Judge Tafoya on April 13, 2009, and May 22, 2009, respectively. On September 24, 2009, Magistrate Judge Tafoya issued a Recommendation that this action be dismissed without prejudice based on Plaintiff's

failure to provide monthly payments pursuant to 28 U.S.C. § 1915. See Recommendation [#80]. On November 2, 2009, Magistrate Judge Tafoya entered a second Recommendation that both CCA's and the State Defendants' motions to dismiss be granted. See Recommendation [#82]. Both Recommendations are incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Plaintiff is a prisoner in the custody of the CDOC and is currently incarcerated at the Kit Carson Correctional Center in Burlington, Colorado. In his *pro se* Complaint filed February 24, 2009, he complains that Defendants have improperly housed him with gang members and improperly terminated him from a sex offender treatment program. Plaintiff seeks damages and injunctive relief. In the Recommendation entered November 2, 2009, Magistrate Judge Tafoya recommends that Plaintiffs claims against the CDOC, and his official capacity claims for declaratory and monetary relief against the named Defendants be dismissed as barred by the Eleventh Amendment. See Recommendation at 11-13. Magistrate Judge Tafoya further recommends that the claims against Defendants Zavaras and Schwartz in their individual capacity be dismissed based on Plaintiff's failure to allege any personal participation by these Defendants. See Recommendation at 14-17. It is also recommended that all remaining claims asserted against the named Defendants in their individual capacities be dismissed because these Defendants are entitled to qualified immunity. See Recommendation at 17-23; 27. Finally, Magistrate Judge Tafoya recommends that the claims against CCA be dismissed based on Plaintiff's failure to state a claim upon which relief can be granted. See Recommendation at 24-27.

Magistrate Judge Tafoya advised the parties that specific written objections were due within ten (10) days after being served with a copy of the Recommendations. Despite this advisement, no objections were filed.¹ No objections having been filed, I am vested with discretion to review the Recommendation “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”² See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Judge Tafoya that the motions to dismiss should be granted. I further agree that any remaining claims should be dismissed without prejudice based on Plaintiff’s failure to make required monthly payments pursuant to 28 U.S.C. § 1915.

Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated

¹I note that on November 19, 2009, Plaintiff was granted an extension of time to file an Objection to the Recommendation entered November 2, 2009, to and including Monday, December 7, 2009. To date, however, no objection has been filed.

² Note, this standard of review is something less than a “clearly erroneous or contrary to law” standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review, Fed. R. Civ. P. 72(b).

September 24, 2009 [#80], is **AFFIRMED and ADOPTED**. It is

FURTHER ORDERED that the Recommendation of United States Magistrate Judge dated November 2, 2009 [#82], is **AFFIRMED and ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendant Corrections Corporation of America's ("CCA") Motion to Dismiss, filed April 13, 2009 [#41], is **GRANTED** and all claims and causes of action against Defendant Corrections Corporation of America are **DISMISSED WITH PREJUDICE**. It is

FURTHER ORDERED that the Motion to Dismiss filed by the Colorado Department of Corrections and Defendants Aristedes W. Zavaras, Meryl Dohrmann, James, Lander, Jerie Scolland, and Elizabeth Schwartz on May 22, 2009 [#50] is **GRANTED** and all claims and causes of action asserted against these Defendants are **DISMISSED WITH PREJUDICE**. It is

FURTHER ORDERED that any remaining claims and causes of action asserted against Defendants Marissa Schnell, Puett and Sargent Rediesel³ are **DISMISSED WITHOUT PREJUDICE**. It is

FURTHER ORDERED that Plaintiff's Motion to Show Cause, filed December 8, 2009 [#89] is **DENIED AS MOOT**.

³I note that none of these Defendants have entered an appearance and it appears that they have not been properly served with a Summons or Complaint in this case.

Dated: January 15, 2010

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge