

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 08-cv-02715-CMA-CBS

ENCARNACION T. RIVERA,

Plaintiff,

v.

BEVERLY DOWIS, HSA, Physician Health Partners,
WARDEN KEVIN MILYARD, Sterling Correctional Facility,
ARISTEDES ZAVARAS, Executive Director of C.D.O.C.,
P.A. JOANN STOCK, Sterling Correctional Facility P.H.P.,
N.P. KATHRY RITTENHOUSE, Sterling Correctional P.H.P.,
DR. JOSEPH GARY FORTUNADO, Sterling Correctional Facility P.H.P.,
DR. PAULA FRANTZ, Chief Medical Officer, Physician Health Partners,
CAPTAIN RICHIE MISHIARA, Sterling Correctional Facility,
CAPTAIN WEINGARDT, Sterling Correctional Facility,
DR. STEPHEN KREBS, Physician Health Partners,
CATHIE HOLST, A.D.A. Coordinator, Colorado Department of Corrections, and
JOHN DOE AND JANE DOE 1-10,

Defendants.

**ORDER ADOPTING AND AFFIRMING JANUARY 29, 2010
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the Court on the January 29, 2010 Recommendation by the Magistrate Judge that Defendants' Motions to Dismiss (Doc. ## 31, 34) be granted and that this case be dismissed in its entirety. (Doc. # 50.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation.

(Doc. # 28 at 20.) Despite this advisement, no objections to the Magistrate Judge's Recommendation were filed by either party. "In the absence of timely objection, the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir.1991) (citing *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").

It appears, however, that Plaintiff never received a copy of the Recommendation, as it was returned to the Court as undeliverable. (Doc. # 51). Plaintiff has obviously failed to keep the Court apprised of his current address, in contravention to the Local Rules. See D.C.COLO.LCiv.R 10.1M ("Within five days after any change of address . . . of any attorney or pro se party, notice of the new address . . . shall be filed.").

This is not the first time Plaintiff has had difficulty complying with the Court's Local Rules¹ or its Orders. (See Doc. ## 42-48.) And he has been warned that failing to comply with a Court Order could result in his case being dismissed without notice. (Doc. # 44 at 3.)

Nevertheless, in the interests of justice the Court has conducted a *de novo* review of the issues and recommendations. Based on this review, the Court concludes that the Magistrate Judge's thorough and comprehensive analyses and recommenda-

¹ See *Woods Construction Company v. Atlas Chemical Industries, Inc.*, 337 F.2d 888, 890 (10th Cir. 1964) ("Rules of practice adopted by the United States District Courts . . . have the force and effect of law . . .").

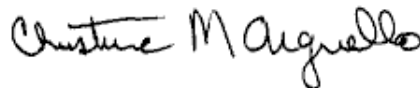
tions are correct and that there is no clear error on the face of the record. See Fed. R. Civ. P. 72. Therefore, the Court hereby ADOPTS the Report of the United States Magistrate Judge as the findings and conclusions of this Court.

Accordingly, it is:

ORDERED that the Recommendation of the United States Magistrate Judge (Doc. # 50), filed January 29, 2010, is ACCEPTED, and, for the reasons cited therein, Defendants' Motions to Dismiss, filed June 22, 2009, (Doc. ## 31, 34) are GRANTED. With no claims remaining against any Defendants, this civil action is DISMISSED in its entirety.

DATED: February 24, 2010

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge