

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

Civil Action No. 09-cv-00949-CMA-MJW

JOSHUA CRUZ,

Plaintiff,

v.

SGT. EMIG, in his personal and individual capacity,
SGT. ADAMIC, in his personal and individual capacity,
C/O CORTESE, in his personal and individual capacity,
LT. G. HEIDENTHAL, in his personal and individual capacity,
LT. H. WILLIAMS, in his personal and individual capacity,
CAPT. DOUG WILSON, in his personal and individual capacity, and
ANTHONY A. DeCESARO, Step 3 Grievance Officer,
in his personal and individual capacity,

Defendants.

**ORDER ADOPTING AND AFFIRMING MARCH 1, 2010 RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This matter is before the Court on the March 1, 2010 Recommendation by the Magistrate Judge that Defendants' Motion to Dismiss (Doc. # 23) be granted and that Claim One, as it pertains to Defendants Heidenthal, Williams, Wilson, and DeCesarro, be dismissed with prejudice. (Doc. # 31.) 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").

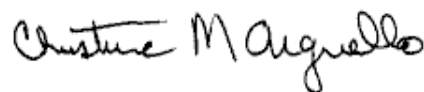
The Court has reviewed all the relevant pleadings, i.e., the Amended Complaint, the Motion to Dismiss (to which Plaintiff filed no response), and the Recommendation. Based on this review, the Court concludes that the Magistrate Judge's thorough and comprehensive analyses and recommendations are correct and that "there is no clear error on the face of the record." Fed. R. Civ. P. 72 advisory committee's note. Therefore, the Court ADOPTS the Recommendation 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. # 31), filed March 1, 2010, is ACCEPTED, and, for the reasons cited therein, Defendants' Motion to Dismiss, filed September 16, 2009, (Doc. # 23) is GRANTED. Claim One, as it pertains to Defendants Heidenthal, Williams, Wilson, and DeCesarro is DISMISSED WITH PREJUDICE.

DATED: March 25, 2010

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge