

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 09-cv-01428-REB-CBS

ROBERT BRANTNER,

Plaintiff,

v.

ARISTEDES ZAVARAS, Director, Colorado Department of Corrections (in official & individual capacity)

Defendant.

**ORDER ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) Defendant Zavaras' **Motion to Dismiss** [#16]¹ filed Oct. 23, 2009; (2) **Plaintiff's [Renewed] Motion for Summary Judgment Pursuant to Fed. R. Civ. P. Rule 56(a)(1); (c); et seq. and D.C.COLO. LcivR 56.1** [#20] filed December 2, 2009; (3) Defendant Zavaras' **Motion to Strike Plaintiff's Renewed Motion for Summary Judgment Pursuant to Fed. R. Civ. P. Rule 56(a)(1); (c); et seq. and D.C.COLO. LcivR 56.1** [#22] filed December 28, 2009; and (4) the **Recommendation of United States Magistrate Judge** [#35] filed April 2, 2010. The plaintiff filed objections [#38] to the recommendation. I approve and adopt the recommendation [#35], overrule the plaintiff's objections [#38], grant the motion to dismiss [#16], deny the plaintiff's motion for summary judgment [#20], and deny the

¹ "[#16]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

motion to strike [#22] as moot.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and I have considered carefully the recommendation, objections, and applicable law. In addition, because the plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991). The recommendation is detailed and well-reasoned. Finding no error in the magistrate judge's reasoning and recommended disposition, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted. I find also that the objections [#38] stated by the plaintiff are without merit.

In his recommendation, the magistrate judge details the history of the plaintiff's case. In 1994, while detained in the Colorado Department of Corrections (DOC), Brantner sustained an injury to his left shoulder that required surgery. From 1996 to 2007, Brantner underwent four surgeries in an attempt to repair his shoulder. Brantner alleges that he remains in pain and in need of further corrective surgery. He alleges that "at some point a Physician Assistant put in a request for a shoulder joint replacement that was *approved* by DOC medical insurance carrier, but the DOC allowed the approval to lapse without surgery being performed when they were apprised of the Plaintiff's serious medical condition." *Second Amended Complaint* [#9], p. 10 of 42. Brantner claims that "the DOC has done nothing and this lack of action equates 'deliberate indifference'" (sic). *Id.* at p. 11 of 42.

As described in detail by the magistrate judge in his recommendation, the plaintiff has failed to allege an affirmative link between the alleged constitutional violation and defendant Aristedes Zavaras' actions in his individual capacity or official capacity. Additionally, Brantner's claim for declaratory and injunctive relief is moot because Brantner is no longer incarcerated in the DOC.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#35] filed April 4, 2010, is **APPROVED AND ADOPTED** as an order of this court;

2. That Defendant Zavaras' **Motion to Dismiss** [#16] filed Oct. 23, 2009, is **GRANTED**;

3. That the **Plaintiff's [Renewed] Motion for Summary Judgment Pursuant to Fed. R. Civ. P. Rule 56(a)(1); (c); et seq. and D.C.COLO. LcivR 56.1** [#20] filed December 2, 2009, is **DENIED**;

4. That Defendant Zavaras' **Motion to Strike Plaintiff's Renewed Motion for Summary Judgment Pursuant to Fed. R. Civ. P. Rule 56(a)(1); (c); et seq. and D.C.COLO. LcivR 56.1** [#22] filed December 28, 2009, is **DENIED AS MOOT**;

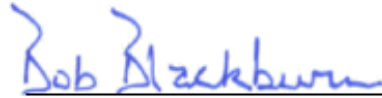
5. That the objections stated in **Plaintiff's Response in Opposition To The "Recommendation of United States Magistrate Judge" In Re "Dismissal" - And Plaintiff's Adamant Assertion That The Complaint Should Not be Dismissed** [#38] filed May 17, 2010, are **OVERRULED**;

6. That judgment **SHALL ENTER** in favor of the defendant, Aristedes Zavaras, against the plaintiff, Robert Brantner, as to all claims and causes of action asserted in this case; and

7. That the defendant is **AWARDED** his costs to be taxed by the Clerk of the Court under FED. R. CIV. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated August 23, 2010, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
Robert E. Blackburn
United States District Judge