

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

Civil Action No. 09-cv-01687-WYD-KMT

JAMES R. SARDAKOWSKI,

Plaintiff,

v.

GARY MORGEN, and
J. WILLEY,

Defendants.

**ORDER ADOPTING AND AFFIRMING
MAGISTRATE JUDGE'S RECOMMENDATION**

THIS MATTER is before the Court in connection with Defendants' Motion to Dismiss Plaintiff's Complaint, filed October 23, 2009 [#20], which was referred to Magistrate Judge Tafoya for a recommendation by a memorandum issued that same date. A Recommendation of United States Magistrate Judge was issued on January 25, 2010, and is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Tafoya recommends therein that Defendants' motion be granted and that this case be dismissed in its entirety, with prejudice. *Recommendation* at 13. Specifically, she recommends and finds that: (1) to the extent that Plaintiff seeks monetary relief from Defendants in their official capacities, the Eleventh Amendment shields them from liability; (2) Plaintiff has failed to state a claim for deliberate indifference against the Defendants; (3) Plaintiff has failed establish that Defendants have violated a protected liberty interest sufficient to sustain his due process claim; (4)

Plaintiff has failed to state a claim for violation of his right to equal protection; and (5) that Defendants are entitled to qualified immunity from Plaintiff's individual capacity claims against them. *Recommendation* 6-13.

Magistrate Judge Tafoya advised the parties that specific written objections were due within ten (10) days after being served with a copy of the Recommendation.

Recommendation at 13-14. Despite this advisement, no objections were filed by any party to the Magistrate Judge's Recommendation. 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."¹ 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's analysis and agree that this case should be dismissed. Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated January 25, 2010 [#22], is **AFFIRMED and ADOPTED**. It is

FURTHER ORDERED that Defendants' Motion to Dismiss Plaintiff's Complaint,

¹ 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).

filed October 23, 2009 [#20] is **GRANTED** and this case is **DISMISSED WITH PREJUDICE.**

Dated: February 24, 2010

BY THE COURT:

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