

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

Civil Action No. 09-cv-02127-CMA-CBS

ROBERT SCHWARTZ,

Plaintiff,

v.

TIMOTHY CREAMY, M.D.,
PAULA FRANTZ, M.D.,
KAREN MONTES-SANCHEZ,
MARY KAY CARTER, and
ARISTEDES ZAVARAS, Executive Director,
All Employees of the Colorado Department of Corrections, individually and in their
official capacities,

Defendants.

**ORDER ADOPTING AND AFFIRMING NOVEMBER 12, 2010 RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above-captioned civil action was referred to United States Magistrate Judge Craig B. Shaffer pursuant to 28 U.S.C. § 636. On November 12, 2010, the Magistrate Judge issued a Report and Recommendation concerning Defendants' Motion to Dismiss Plaintiff's Amended Complaint. (Doc. # 47.) The Magistrate Judge recommended that Defendants' Motion (Doc. # 41) be granted and this civil action dismissed. On March 14, 2011, Plaintiff, proceeding *pro se*, filed timely objections to the Recommendation. (Doc. # 54.) Defendants have not responded.

I. BACKGROUND

This Court has conducted a *de novo* review of this matter, including carefully reviewing all relevant pleadings, the Report and Recommendation, and Plaintiff's Objections to the Report and Recommendation. Plaintiff, with one exception, merely rehashes the allegations asserted in the Amended Complaint (Doc. # 13) without informing this Court of any specific errors in the Report and Recommendation.

Plaintiff's lone objection that warrants discussion is his contention that, with regard to Defendants' collateral estoppel defense, the Magistrate Judge should have converted Defendants' Motion to Dismiss into a motion for summary judgment. Plaintiff notes that the Magistrate Judge reviewed the Final Order of Special Master in determining that Plaintiff's Claim Three is precluded under the doctrine of collateral estoppel. Notwithstanding the general rule prohibiting the consideration of evidence beyond the pleadings on a motion to dismiss, a court "may consider documents referred to in the complaint if the documents are central to plaintiff's claim and the parties do not dispute the documents' authenticity." *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007) (quoting *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th cir. 2002)). Although the Magistrate Judge considered the Final Order of Special Master (Doc. # 41-1), Plaintiff had referred to the document in his complaint. (Doc. # 32 at 5-6.) Thus, there was no need to convert Defendants' Motion to Dismiss into one for summary judgment.

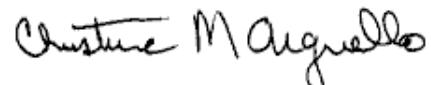
Based on this *de novo* review, this Court concludes that the Magistrate Judge's thorough and comprehensive analyses and recommendations are correct. Therefore, Plaintiff's Objections are OVERRULED and the Court hereby ADOPTS the Report of the United States Magistrate Judge as the findings and conclusions of this Court.

Accordingly, IT IS ORDERED THAT:

1. Defendants' Motion to Dismiss (Doc. # 41) is GRANTED;
2. All claims against all Defendants are DISMISSED;
3. Plaintiff's Claim Three is barred by the doctrine of collateral estoppel and is therefore DISMISSED WITH PREJUDICE; and
4. Plaintiff's § 1983 claim for monetary damages against Defendants in their official capacities is barred by the Eleventh Amendment and is DISMISSED WITH PREJUDICE pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

DATED: March 29, 2011

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge