

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

Civil Case No. 09-cv-02220-REB-KMT

DeANGELO HORTON,

Plaintiff,

v.

EXECUTIVE DIRECTOR ARISTEDES ZAVARAS,
AVCF WARDEN MIKE ARELLANO,
AVCF STAFF MEMBER JOHN DOE (Warden Arellano's Designee),
CSP WARDEN SUSAN JONES,
CSP STAFF MEMBER JOHN DOE (Warden Jones' Designee),
AVCF STAFF MEMBER REEVES,
AVCF STAFF MEMBER GRAHAM,
AVCF STAFF MEMEBER KURTZ,
AVCF STAFF MEMBERS JOHN AND/OR JANE DOES (Committee Members for 30
Day Reviews),
CSP CASE MANAGER DeFUSCO,
CSP COMMITTEE CHAIRMAN OLSON, and
CSP STAFF MEMBERS JOHN AND/OR JANE DOES (Committee Members for 30 Day
Reviews),

Defendants.

**ORDER ADOPTING RECOMMENDATIONS OF THE
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is matter before me on the following: (1) the defendants' **Motion To Dismiss** [#17]¹ filed January 4, 2010; (2) the **Recommendation of United States Magistrate Judge** [#31] filed April 1, 2010; and (3) the **Amended Recommendation of United States Magistrate Judge** [#35] filed June 11, 2010. I approve and adopt both

¹ “[#17]” 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.

recommendations; thus, I grant the motion to dismiss in part and deny it in part.

No objections to either recommendation have been filed, and, therefore, I review them only for plain error. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005).² Finding no error, much less plain error, in the magistrate judge's recommended dispositions, I find and conclude that the recommendations should be approved and adopted.

In her April 1, 2010, recommendation [#31], the magistrate judge recommends that the plaintiff's claims against defendant Mike Arellano be dismissed under FED. R. CIV. P. 4(m) because Arellano has not been served with a summons and the complaint and more than 120 days have passed since the complaint was filed. The magistrate judge's analysis of this issue is correct, and I approve and adopt this recommendation.

In her June 11, 2010, recommendation, the magistrate judge recommends that the defendants' motion to dismiss be granted in part and denied in part. The magistrate judge recommends that defendants Aristedes Zavaras and Susan Jones be dismissed with prejudice because the plaintiff has failed to allege that either of these defendants personally participated in the violations alleged in the complaint. In addition, the magistrate judge recommends that the defendants' motion to dismiss be denied to the extent the defendants seek dismissal of all other claims and defendants. I agree with the magistrate judge's detailed analysis of these issues, and I approve and adopt this recommendation.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#31] filed

² This standard pertains even though plaintiff is proceeding *pro se* in this matter. ***Morales-Fernandez***, 418 F.3d at 1122.

April 1, 2010, is **APPROVED AND ADOPTED** as an order of this court;

2. That under FED. R. CIV. P. 4(m), the plaintiff's claims against defendant, Mike Arellano, are **DISMISSED** without prejudice;

3. That the **Amended Recommendation of United States Magistrate Judge** [#35] filed June 11, 2010, is **APPROVED AND ADOPTED** as an order of this court;

4. That the defendants' **Motion To Dismiss** [#17] filed January 4, 2010, is **GRANTED** as to the plaintiff's claims against defendants, Aristedes Zavaras and Susan Jones;

5. That the plaintiff's claims against defendants, Aristedes Zavaras and Susan Jones, are **DISMISSED** with prejudice;

6. That defendants, Mike Arellano, Aristedes Zavaras, and Susan Jones, are **DROPPED** from this action, and the caption of this case shall be **AMENDED** accordingly;

7. That otherwise, the defendants' **Motion To Dismiss** [#17] filed January 4, 2010, is **DENIED**.

Dated August 24, 2010, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge