

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

Civil Action No. 09-cv-02328-WYD-KLM

WELLMAN GIBSON,

Plaintiff,

v.

ARISTEDES W. ZAVARAS, KIM BEICKER,
CO LOPEZ,
MAJOR MARTINEZ,
CAPTAIN MATOYER,
SGT. VERENA PACHECO, and
WARDEN HARTLEY,

Defendants.

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

THIS MATTER is before the Court on Plaintiff's Motion to Drop Party from Complaint (docket #86), filed March 17, 2010. The motion was referred to Magistrate Judge Kristen L. Mix for a Recommendation by Order of Reference dated October 23, 2009. Magistrate Judge Mix issued a Recommendation on March 18, 2010. Specifically, Magistrate Judge Mix recommends that the pending motion be granted and that Defendant Martinez and Claim Two be dismissed with prejudice. (Recommendation at 2.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b).

Magistrate Judge Mix advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation

at 2.) Despite this advisement, no objections were filed to the 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 find that Magistrate Judge Mix's Recommendation is thorough, well reasoned and sound. I agree with Magistrate Judge Mix that the pending motion should be granted and that Defendant Martinez and Claim Two should be dismissed with prejudice for the reasons stated in both the Recommendation and this Order.

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Mix (docket #89), filed March 18, 2010, is **AFFIRMED** and **ADOPTED**.

In accordance therewith, it is

FURTHER ORDERED that the Plaintiff's Motion to Drop Party from 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).

(docket #86), filed March 17, 2010, is **GRANTED**. It is

FURTHER ORDERED that Defendant Martinez and Claim Two are **DISMISSED WITH PREJUDICE**. The clerk of the Court shall amend the case caption to reflect the dismissal of the party.

Dated: April 21, 2010

BY THE COURT:

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