

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

Civil Action No. 10-cv-02491-CMA-CBS

STEVEN BARKSDALE,

Plaintiff,

v.

GENIE CONNAGHAN,
PATRICIA PANEK, a/k/a PATRICIA RAE, and
AVALON CORRECTIONAL SERVICES, d/b/a PHOENIX CENTER,

Defendants.

**ORDER ADOPTING AND AFFIRMING JULY 28, 2011 RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This case was referred to Magistrate Judge Craig B. Shaffer, pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72. On July 28, 2011, the Magistrate Judge issued a Recommendation (Doc. # 39), regarding Defendant Avalon Correctional Service's ("Avalon) Motion to Quash Service (Doc. # 15), and Defendant Genie Connaghan's Motion to Dismiss. (Doc. # 22.) The Magistrate Judge's Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. (Doc. # 39 at 20.) That time period is now expired, and neither party has filed any objections to the Recommendation.

"In the absence of timely objection, the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d

1165, 1167 (10th Cir. 1991) (citing *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”).

The Court has reviewed all the relevant pleadings, including the Complaint, the Motion to Quash Service, the Motion to Dismiss, Plaintiff's responses to those motions, and the Magistrate Judge's Recommendation. Based on this review, the Court concludes that the Magistrate Judge's thorough and comprehensive analyses and recommendations regarding the Motion to Quash Service and the Motion to Dismiss are correct and that “there is no clear error on the face of the record.” Fed. R. Civ. P. 72 advisory committee's note. Therefore, the Court ADOPTS and AFFIRMS the Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court.

Accordingly, it is ORDERED that the Recommendation of the United States Magistrate Judge (Doc. # 39), filed July 28, 2011, is ACCEPTED, and, for the reasons cited therein:

(1) Defendant Avalon's Motion to Quash Service (Doc. # 15) is GRANTED. However, this Court shall retain jurisdiction and Plaintiff is granted leave to effect proper service on Defendant Avalon pursuant to Fed. R. Civ. P. 4(h).

(2) Defendant Connaghan's Motion to Dismiss (Doc. # 22) is GRANTED with

respect to Plaintiff Barksdale's claim against Defendant Connaghan in her official capacity, and his claim for compensatory damages. As these claims cannot be cured through amendment of the Complaint, these claims are DISMISSED WITH PREJUDICE. Defendant Connaghan's Motion is also GRANTED with respect to Plaintiff's Eight Amendment claim against Defendant Connaghan, in her individual capacity. As this claim could potentially be cured by further amendment, this claim is DISMISSED WITHOUT PREJUDICE. Finally, Defendant Connaghan's Motion is DENIED as to Plaintiff Barksdale's claim for retaliation.

DATED: August 18th , 2011.

BY THE COURT:

s/Christine m. Arguello
CHRISTINE M. ARGUELLO
United States District Judge