

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

Civil Action No. 11-cv-01424-CMA-MJW

SHAWN D. ALLEN,

Plaintiff,

v.

K. FERRELL,
E. SNEAD,
J. LIBEL, and
R. KORTH,

Defendants.

**ORDER ADOPTING AND AFFIRMING FEBRUARY 13, 2013
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This case was referred to United States Magistrate Judge Michael J. Watanabe pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72. (Doc. # 14.) On February 13, 2013, the Magistrate Judge issued a Recommendation, advising the Court to grant in part and deny in part Defendants' Motion for Summary Judgment (Doc. # 72). (Doc. # 101.) The Recommendation stated that "the parties have fourteen (14) days after service of this recommendation to serve and file specific written objections . . . with the District Judge assigned to the case." (*Id.* at 26.) It further noted that "[a] party's failure to file and serve such written, specific objections waives *de novo* review of the recommendation by the District Judge" (*Id.* at 26-27.) Following the Recommendation, Plaintiff moved for, and the Court granted him, an extension of

time to file objections, which he did on March 8, 2013. (See Doc. ## 103-05.)

Defendants did not file any objections.

When a magistrate judge issues a recommendation on a dispositive matter, Fed. R. Civ. P. 72(b)(3) requires that the district judge determine *de novo* any part of the magistrate judge's [recommended] disposition that has been properly objected to." In conducting its review, "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." *Id.* Accordingly, the Court has conducted a *de novo* review of those parts of Judge Watanabe's Recommendation to which Plaintiff properly objected,¹ including carefully reviewing all relevant pleadings, the Recommendation, and Plaintiff's objections thereto. Based on this *de novo* review, the Court finds Judge Watanabe's Recommendation to be correct, notwithstanding Plaintiff's objections.

Accordingly, it is ORDERED that:

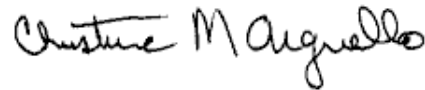
1. The February 13, 2013 Recommendation of the United States Magistrate Judge (Doc. # 101) is AFFIRMED and ADOPTED as an Order of this Court.
2. Plaintiff's objections (Doc. # 105) are OVERRULED.

¹ All other aspects of the Recommendation have been reviewed for clear error. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (observing 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 identified no such error.

3. Pursuant to the Recommendation, Defendants' Motion for Summary Judgment (Doc. # 72) is DENIED IN PART with respect to Plaintiff's Eighth Amendment claim against Defendant Snead regarding the cleanliness of Plaintiff's Mental Health Watch cell, including the lack of water and the ability to flush the toilet; the motion is GRANTED IN PART in all other respects.

DATED: March 25, 2013

BY THE COURT:

A handwritten signature in black ink, reading "Christine M. Arguello". The signature is written in a cursive, flowing style. The first name "Christine" is written in a larger, more prominent script, followed by "M." and "Arguello".

CHRISTINE M. ARGUELLO
United States District Judge