

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 11-cv-03108-WJM-MEH

JOHN HUTCHINSON,

Plaintiff,

v.

SGT. HOULE,

Defendant.

**ORDER ADOPTING RECOMMENDATION OF MAGISTRATE JUDGE, AND
GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS**

This matter is before the Court on the September 4, 2012 Recommendation of United States Magistrate Judge Michael E. Hegarty (the "Recommendation") (ECF No. 37) that Defendant's Motion to Dismiss (ECF No. 34) be granted in part and denied in part. Specifically, Magistrate Judge Hegarty recommended that Plaintiff's Eighth Amendment claim against Defendant in his official capacity be dismissed, but that Plaintiff's Eighth Amendment claim against Defendant in his individual capacity is not subject to dismissal. (ECF No. 37.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen days after being served with a copy of the Recommendation. (ECF No. 37, at 1-2 n.1.) Despite this advisement, no objections to the Magistrate Judge's Recommendation have to date been filed by either party (over a period of more than eight weeks).

However, on October 1, 2012, the Court received notice that service of the Recommendation on Plaintiff was not accomplished, because the mailing was returned as undeliverable. (ECF No. 38.) The returned envelope indicates that Plaintiff may have been released on parole. (*Id.*) On October 2, 2012, the Court issued an Order stating,

D.COLO.LCivR 10.1.M requires a *pro se* party to file a Notice of Change of Address with the Court if the party changes his/her address. The Court will extend the deadline for Plaintiff to file an objection to the Recommendation to October 19, 2012. If the Court does not receive an objection by that deadline, the Court will promptly rule on Defendant's Motion to Dismiss. The Court will attempt to re-serve Plaintiff with the Recommendation, and this Order, at the current address on file.

(ECF No. 39.) The Court again attempted service on Plaintiff, but the mail was again returned as undeliverable. (ECF No. 42.) Two other Court mailings have also been returned as undeliverable since that time. (ECF No. 44, 45.)

Having given Plaintiff meaningful opportunities to file an objection the Magistrate Judge's Recommendation, the Court now adopts the Magistrate Judge's recommendation. The Magistrate Judge's analysis in his Recommendation was thorough and sound, and there is no clear error on the face of the record. See Fed. R. Civ. P. 72(b) advisory committee's note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); see also *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) ("In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate.").

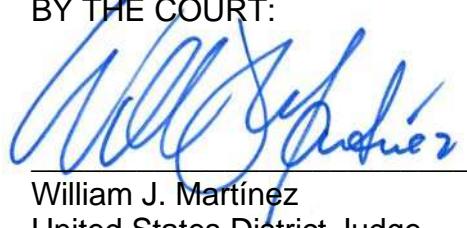
In accordance with the foregoing, the Court ORDERS as follows:

- (1) The Magistrate Judge's Recommendation (ECF No. 37) is ADOPTED in its entirety;

- (2) Defendant's Motion to Dismiss (ECF No. 34) is GRANTED IN PART and DENIED IN PART; and
- (3) Plaintiff's Eighth Amendment claim against Defendant in his official capacity is DISMISSED WITH PREJUDICE.

Dated this 31st day of October, 2012.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William J. Martinez".

William J. Martínez
United States District Judge