

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

Civil Action No. 12-cv-02429-CMA-KLM

MARION HARPER,

Plaintiff,

v.

ROBIN CRONK, Montezuma County Sheriff's Dept.,
MONTEZUMA COUNTY BOARD OF COMMISSIONERS,
CITY OF CORTEZ, COLORADO,
ANGELO MARTINEZ, Cortez, Colorado, Police Department,
RUSSELL WASLEY, District Attorney, 22nd Judicial District,
HON. J.E. LAWRENCE, Judge, 22nd Judicial District,
HON. DOUGLAS WALKER, Judge, 22nd Judicial District, and
HON. TODD PLEWE, Judge, 22nd Judicial District,

Defendants.

**ORDER ADOPTING AND AFFIRMING JUNE 11, 2013
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This case was referred to United States Magistrate Judge Kristen L. Mix pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72. (Doc. # 5.) On June 11, 2013, Judge Mix issued a Recommendation, advising that "Plaintiff's claims against Defendants Wasley, Lawrence, Walker, Plewe, the Montezuma County Sheriff's Department, the Montezuma County Board of Commissioners, and the Cortez Police Department be dismissed without prejudice." (Doc. # 53 at 9.) Thereafter, Plaintiff filed an objection to Judge Mix's Recommendation (Doc. # 57), and Defendants City of Cortez and Officer Angelo Martinez filed a response (Doc. # 60).

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.*

In the instant case, Plaintiff does not “properly object[]” to any part of the Recommendation. Instead, he reiterates arguments that were properly before Magistrate Judge Mix at the time his Recommendation issued. Nonetheless, the Court has conducted a *de novo* review of this matter, including reviewing all relevant pleadings, the Recommendation, and Plaintiff’s objection thereto. Based on this *de novo* review, the Court concludes that Judge Mix’s Recommendation is correct and is not called into question by Plaintiff’s objection.

Accordingly, it is hereby ORDERED that Plaintiff’s objection (Doc. # 57) is OVERRULED. It is

FURTHER ORDERED that the Recommendation of United States Magistrate Judge Kristen L. Mix (Doc. # 53) is AFFIRMED and ADOPTED as an Order of this Court. Pursuant to the Recommendation, it is

FURTHER ORDERED that the underlying Motion and Affidavit (Doc. # 44) is GRANTED and Plaintiff be allowed to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, it is

FURTHER ORDERED that the claims against Defendants Wasley, Lawrence, Walker, Plewe, the Montezuma County Sheriff’s Department, the Montezuma County

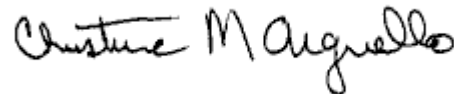
Board of Commissioners, and the Cortez Police Department are DISMISSED WITHOUT PREJUDICE. It is

FURTHER ORDERED that if Plaintiff wishes to refile the claims that are dismissed without prejudice, he must do so within thirty (30) days from the date of this Order. Plaintiff is reminded that an amended complaint must comply with the pleading requirements of Fed. R. Civ. P. 8 as discussed in the Court's previous orders.

The only remaining claims will be (1) Plaintiff's claim against Defendant Cronk relating to his October 17, 2011 arrest of Plaintiff, and (2) Plaintiff's intentional infliction of emotional distress claim against Defendant Martinez.

DATED: September 09, 2013

BY THE COURT:

A handwritten signature in black ink that reads "Christine M. Arguello". The signature is written in a cursive, flowing style.

CHRISTINE M. ARGUELLO
United States District Judge