

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

Civil Action No. 13-cv-0259-WJM-BNB

HAL LEWIS HERBERT,

Plaintiff,

v.

TOM CLEMENTS, Executive Director, Colorado Department of Corrections,  
JAMES FALK, Warden, Sterling Correctional Facility (SCF),  
MICHELLE NYCZ, Major SCF,  
ROBERT KEISEL, Captain, SCF, and  
CHASE FELZIEN, Lieutenant, SCF,

Defendants.

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**ORDER ADOPTING OCTOBER 24, 2013 RECOMMENDATION OF MAGISTRATE  
JUDGE AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS**

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This matter is before the Court on the October 24, 2013 Recommendation of United States Magistrate Judge Boyd N. Boland (the "Recommendation") (ECF No. 28) that the Defendants' Motion to Dismiss (ECF No. 16) be granted in part and denied in part. 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. 28 at 15 n.4.) Despite this advisement, no objections to the Magistrate Judge's Recommendation have to date been received.

The Court concludes that the Magistrate Judge's analysis was thorough and sound, and that there is no clear error on the face of the record. See Fed. R. Civ. P.

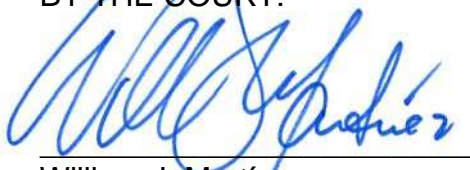
72(b) advisory committee's note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); see also *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) ("In the absence of timely objection, 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. 28) is ADOPTED in its entirety;
- (2) Defendants' Motion to Dismiss (ECF No. 16) is GRANTED IN PART and DENIED IN PART;
- (3) Plaintiff's Claims against the Defendants in their official capacities for retroactive monetary relief are DISMISSED based on Eleventh Amendment immunity; and
- (4) All other claims remaining pending in this case.

Dated this 19<sup>th</sup> day of November, 2013.

BY THE COURT:



William J. Martínez  
United States District Judge