

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 13-cv-03420-RBJ-BNB

WESLEY BERNARD WILLIAMS,

Plaintiff,

v.

DAVID ALLRED, (Doctor)

Defendant.

ORDER

This matter is before the Court on the October 22, 2014 Order and Recommendation of Magistrate Judge Boyd N. Boland [ECF No. 26]. The Recommendation addresses the defendant's Motion to Dismiss for Failure to State a Claim [ECF No. 21] and 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 (14) days after being served with a copy of the Recommendation. The plaintiff filed an objection on October 27, 2014 [ECF No. 27]. The defendant filed a response to the plaintiff's objection on October 30, 2014 [ECF No. 28].

Following the issuance of a magistrate judge's recommendation on a dispositive matter, the district court judge must "determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). The district judge is permitted to "accept, reject, or modify the recommended disposition; receive further instruction; or return the matter to the magistrate with instructions." *Id.* "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) (“It 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 the relevant filings concerning the Recommendation, in particular the Complaint, the motion to dismiss, the briefs on the motion, and the objection and response. The Court has conducted a *de novo* review of the Recommendation in response to the plaintiff’s timely-filed objection. Based on this review, the Court concludes that Judge Boland’s analyses and recommendations are correct. The Court declines, however, to reach the question of whether the plaintiff lacks a remedy under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), for violations of the First Amendment. Instead, the Court adopts Judge Boland’s alternative holding that the plaintiff failed to sufficiently plead a First Amendment retaliation claim. Consistent with this opinion, the Court ADOPTS 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 [ECF No. 26] is AFFIRMED, and it is ADOPTED (except as noted above). The defendant’s Motion to Dismiss [ECF No. 21] is GRANTED. Judgment will enter dismissing the case with prejudice.

DATED this 24th day of November, 2014.

BY THE COURT:



R. Brooke Jackson
United States District Judge