

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 14-cv-02331-RM-KMT

EDWARD LEE HICKS,

Plaintiff,

v.

ALVIN MASSENBURG, Official Capacity as a Medical Provider for the Colorado Dep. of Corrections, and in his Individual Capacity, Limon Corr. Facility,
NICOLE BLATNICK, Official Capacity as Health Service Adm. For the Colorado Dep. Of Corrections, and in her individual capacity, Limon Corr. Facility,
TRUDY SICOTTE, Official Capacity as a Medical Provider for the Colorado Dep. Of Corrections, and in her Individual Capacity, Limon Corr. Facility,
MARTINEZ, Official Capacity as a Chief Medical Officer for the Colorado Dep. Of Corrections, and in his Individual Capacity,
VALENTINA KUCHER, Official Capacity as a Medical Provider for the Colorado Dep. Of Corrections, and in her individual capacity, Limon Corr. Facility,
JENNIFER NOVATNY, Official Capacity as a Supervisor in the Pharmacy for the Colorado Department of Corrections, and in her Individual Capacity,
JOHN DOE, Official Capacity as Deputy Director of Clinical Services for the Colorado Dep. Of Corrections and in their Individual Capacity,
RICK RAEMISCH, Executive Director for the Colorado Department of Corrections, and in his Individual Capacity,

Defendants.

**ORDER ON
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE (ECF NO. 79)**

This matter is before the Court on the September 9, 2015, Recommendation of United States Magistrate Judge Kathleen M. Tafoya (the “Recommendation”) (ECF No. 79) to grant Defendants Massenbourg, Blatnick, Martinez, Kucher, Novatny, and Raemisch’s (“CDOC Defendants”) Motion to Dismiss Amended Complaint (“Motion”) (ECF No. 27). Plaintiff filed a response to the CDOC Defendants’ Motion, to which no reply was filed. 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. 79 at pages 19-20.) Despite this advisement, Plaintiff filed no objection as to the characterization of his claims or to any other aspect of the Recommendation. In fact, no objections to the Recommendation have to date been filed by any party and the time to do so has expired. (*See generally* Dkt.)

As no objections have been filed, the Court reviews the Recommendation only for 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."). Applying this standard, the Court approves and adopts the Recommendation except for its statement that the CDOC Defendants argued only that Plaintiff has failed to satisfy the objective component of the Eighth Amendment deliberate indifference test (ECF No. 79, page 13). Instead, CDOC Defendants had assumed, "*arguendo*, that Plaintiff ha[d] alleged enough to meet the objective component..." (ECF No. 27, page 9). Nonetheless, the Court finds and concludes that the Magistrate Judge's analysis of the Amended Complaint and the matters raised in the Motion was thorough and sound, and concurs with her Recommendation. The Recommendation, except for the referenced statement, is, therefore, adopted as an order of this Court.

Based on the foregoing, the Court ORDERS

- (1) That the Recommendation of United States Magistrate Judge (ECF No. 79), except for the referenced statement, is ADOPTED as an order of this Court;

- (2) That CDOC Defendants' Motion to Dismiss Amended Complaint (ECF No. 27) is GRANTED as stated herein;
- (3) That Plaintiff's claims against the CDOC Defendants in their official capacities for money damages and retrospective declaratory relief are DISMISSED WITHOUT PREJUDICE as barred by the Eleventh Amendment;
- (4) That Plaintiff's claims against the CDOC Defendants in their official capacities for prospective injunctive relief are DISMISSED WITHOUT PREJUDICE AS MOOT as to Defendants Massenbourg, Blatnick, and Kucher as Plaintiff is no longer incarcerated at the Limon Correctional Facility;
- (5) That Plaintiff's remaining claims against the CDOC Defendants are DISMISSED WITH PREJUDICE for failure to state a claim under Fed. R. Civ. P. 12(b)(6); and
- (6) There being no further claims against the CDOC Defendants, this matter shall proceed only against Defendant Trudy Sicotte, who filed an Answer on October 20, 2014 (ECF No. 22).

DATED this 2nd day of October, 2015.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge