

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

Civil Action No 15-cv-02664-RBJ

PETE ARCHULETA,

Plaintiff,

v.

LOU ARCHULETTA, in his individual capacity,
FRANCIS FALK, in her individual capacity,
TRAVIS TRANI, in his individual capacity, and
RICK RAEMISCH, in his official capacity,

Defendants.

ORDER

This matter is before the Court on defendants' motion to dismiss [ECF No. 23], as supplemented [ECF No. 56], and the Recommendation of Magistrate Judge Kathleen M. Tafoya [ECF No. 59]. Her 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. 59 at 21–22. Despite these advisements, and permitting additional time for service and filing due to possible delays, neither party filed an objection to Magistrate Judge Wang's Recommendation. "In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991).

The Court has reviewed Magistrate Judge Tafoya's Recommendation and concludes that her analysis and recommendations are correct, and that "there is no clear error on the face of the record." Fed. R. Civ. P. 72 advisory committee's note. Therefore, the Court adopts the Recommendation as the findings and conclusions of this Court.

ORDER

1. The Magistrate Judge Tafoya's February 27, 2017 Recommendation [ECF No. 59] is **AFFIRMED** and **ADOPTED**.

2. Defendants' Motion to Dismiss Complaint and Jury Demand [ECF No. 23], as supplemented [ECF No. 56], is **GRANTED IN PART** and **DENIED IN PART**.

3. Accordingly, the Court dismisses with prejudice plaintiff's First Amendment claim for monetary damages against Defendant Raemisch, and dismisses without prejudice plaintiff's First Amendment retaliation claim against Defendant Trani related to plaintiff's initial placement in the Residential Treatment Program. *See* ECF No. 59 at 10, 15–16. Plaintiff's other First Amendment claim against Defendant Trani, related to plaintiff's placement in the administrative segregation step down program, as well as plaintiff's First Amendment claims against the other defendants, survive defendants' motion to dismiss.

DATED this 21st day of March, 2017.

BY THE COURT:



R. Brooke Jackson
United States District Judge