

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

Civil Action No. 17-cv-00830-CMA-KMT

JERRY BLAIR,

Plaintiff,

v.

RICK RAEMISCH, Executive director C.D.O.C.,
STEVEN OWENS, CSP Warden,
CPT. RICHARD, CSP Kitchen Supervisor,
OFFRELIG, Creator of Religious Menu, C.D.O.C.,
CHARLEEN CROCKETT, Food Service Administrator,
CAPT. PHIPPS, SCF Kitchen Supervisor, and
CANTEEN REVIEW COMMITTEE, C.C.I.,

Defendants.

**ORDER ADOPTING IN PART AND REJECTING IN PART THE RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE KATHLEEN M. TAFOYA**

This matter is before the Court on the Recommendation by United States Magistrate Judge Kathleen M. Tafoya (Doc. # 54), wherein she recommends that this Court grant Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (Doc. # 19). 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. (Doc. # 54 at 14–15.) Twenty days have lapsed since the Recommendation issued, and despite that advisement, no objections have been filed by either party.

“[T]he district court is accorded considerable discretion with respect to the treatment of unchallenged magistrate reports. 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) (stating that “[i]t 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.”)).

After reviewing the Recommendation of Magistrate Judge Tafoya, in addition to applicable portions of the record and relevant legal authority, the Court is satisfied that the recommended dismissal of Plaintiff’s federal claims is sound and not clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a). Magistrate Judge Tafoya recommended dismissal of the complaint with prejudice but did not explain the reasoning therefore. A dismissal with prejudice of a complaint that fails to state a claim under Rule 12(b)(6) is appropriate only when “granting leave to amend would be futile.” *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006). The Court finds, considering the totality of circumstances, affording the Plaintiff an opportunity to amend the complaint again in an attempt to assert a plausible cause of action would be futile, particularly considering that the facts affirmatively alleged in Plaintiff’s complaint expressly contradict the validity of his claims. The Court therefore adopts Magistrate Judge Tafoya’s recommended dismissal with prejudice of Plaintiff’s First, Eighth, and Fourteenth Amendment claims, as well as his claim brought under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”).

Magistrate Judge Tafoya also recommended that the Court dismiss with prejudice Plaintiff's state law claim, brought under 24-34-601(2)(a). However, established Tenth Circuit precedent indicates that "when all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims." *Koch v. City of Del City*, 660 F.3d 1228, 1248 (10th Cir. 2011); *Young v. City of Albuquerque*, 77 F. Supp. 3d 1154, 1185 (D.N.M. 2014); see also *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). The Court therefore declines to exercise supplemental jurisdiction over that claim.

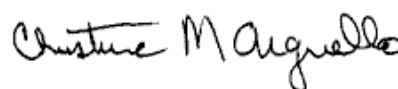
Accordingly, the Court ORDERS as follows:

1. The Report and Recommendation of United States Magistrate Judge Kathleen M. Tafoya (Doc. # 54) is ADOPTED IN PART and REJECTED IN PART.
2. Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (Doc. # 19) is GRANTED.
3. Plaintiff's federal claims are DIMISSED WITH PREJUDICE.
4. Plaintiff's state law claim is DIMISSED WITHOUT PREJUDICE for lack of jurisdiction.

Because there are no other claims, counterclaims, or Defendants remaining in this case, the Court FURTHER ORDERS the case DISMISSED in its entirety.

DATED: August 16, 2018

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge