

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

LOUIS KERLINSKY,)	
Plaintiff)	
)	
v.)	C.A. NO. 09-30136-MAP
)	
SANDOZ, INC., ET AL.,)	
Defendants)	

MEMORANDUM AND ORDER RE:
REPORT AND RECOMMENDATION WITH REGARD TO
UNITED STATES DEPARTMENT OF VETERANS AFFAIRS'
MOTION TO DISMISS
(Dkt. Nos. 40 & 48)

November 4, 2010

PONSOR, D.J.

Plaintiff, Louis Kerlinsky, proceeding pro se, has brought this putative class action against, among others, the United States Department of Veteran's Affairs ("USDVA"). The USDVA filed a partial Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), which was referred to Magistrate Judge Kenneth P. Neiman for a report and recommendation.

On October 25, 2010, Judge Neiman issued his Report and Recommendation, to the effect that the motion should be allowed and that Counts 7, 8, and 12 be dismissed. Plaintiff has filed a hand-written objection to the Report and Recommendation.

The court, upon de novo review, hereby ADOPTS the Report and Recommendation (Dkt. No. 48). The objections offered by Plaintiff have no merit. Indeed, Plaintiff's

alleged quotations from Neitzke v. Williams, 490 U.S. 319, 327 (1989), and Vmark Software v. EMC Corp., 642 N.E. 2d 587, 596 (Mass. App. Ct. 1994), cannot be found in either of those decisions. Judge Neiman's statement of the law is perfectly correct, and the standard he has used to weigh the appropriateness of dismissal is proper.

For the foregoing reasons, USDVA's Motion to Dismiss (Dkt. No. 40) is hereby ALLOWED and Counts 7, 8, and 12 are hereby DISMISSED.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge