

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSHUA URIOSTE,

Plaintiff,

vs.

No. 1:16-CV-00755-JCH-KRS

CORIZON AND CENTURION
HEALTH CARE PROVIDERS, et al.,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court upon the *Martinez* report filed by Defendants German Franco, Clarence Olivas, Michelle Boyer, Roger Trujillo, Kyle Perez, Augustine Palomino, and Oscar Trevizo on May 5, 2020. (Doc. 44). In accordance with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Kevin R. Sweazea, who entered Proposed Findings of Fact and [a] Recommended Disposition (“PFRD”) (Doc. 73) on May 6, 2021. As detailed in the PFRD, Judge Sweazea recommended that the Court strike certain allegations in Plaintiff Joshua Urioste’s Second Amended Complaint, grant Urioste permission to file his surreply, grant summary judgment to these Defendants as to Urioste’s Eighth Amendment claims, deny summary judgment to Defendant Palomino as to certain retaliation claims against him, and grant summary judgment to these Defendants as to Urioste’s remaining retaliation claims. (*See id.*). Judge Sweazea also notified the parties of their right to file written objections pursuant to 28 U.S.C. § 636(b)(1)(C). (*See id.* at 47). Neither party objected to the PFRD, and the deadline for doing so expired on June 3, 2021. (*See Doc. 79*). Having reviewed the record, the Court determines that it will adopt the PFRD in its entirety.

IT IS, THEREFORE, ORDERED that:

- 1) the Magistrate Judge's Proposed Findings of Fact and Recommended Disposition (Doc. 73) is hereby ADOPTED;
- 2) the allegations in Urioste's Second Amended Complaint (Doc. 62) are STRICKEN to the extent that they differ from those in his First Amended Complaint (Doc. 24) in any way other than (i) substituting Gary Maciel for Oscar Trevizo; (ii) clarifying that Urioste's claims are brought against the Defendants in their official and individual capacities; and (iii) eliminating claims and parties previously dismissed by the Court;
- 3) Urioste is GRANTED permission to file his surreply (Doc. 63) *nunc pro tunc* to August 7, 2020;
- 4) summary judgment is GRANTED to the moving Defendants as to Urioste's Eighth Amendment deliberate indifference claims;
- 5) summary judgment is DENIED as to Urioste's retaliation claims against Defendant Palomino for spraying Urioste with mace on April 20, 2016, and for calling Urioste a "rat" on June 14, 2016; and
- 6) summary judgment is GRANTED to the moving Defendants as to Urioste's remaining retaliation claims against them.


SENIOR UNITED STATES DISTRICT JUDGE