

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

JAMES CARR,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Case No. CIV-16-505-F
	)	
CHRISTINA THOMAS, Medical	)	
Administrator, Lawton Correctional	)	
Facility; MARS GONZAGA, M.D.,	)	
	)	
Defendants.	)	

**ORDER**

On May10, 2017, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation, recommending that the motions to dismiss filed by defendants, Christina Thomas and Mars Gonzaga, be denied.

Presently before the court are the timely objections of defendants, Christina Thomas and Mars Gonzaga, M.D., to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Initially, the court notes that defendants’ objections contain arguments not raised before Magistrate Judge Mitchell. *See*, doc. no. 36, pp. 2-9; 10; doc. no. 35, pp. 2-3. The court declines to address arguments not raised before Magistrate Judge Mitchell. Marshall v. Chater, 75 F.3d 1421, 1426 (10<sup>th</sup> Cir. 1996) (“Issues raised for the first time in objections to the magistrate’s recommendation are deemed waived.”) Moreover, in determining whether a plaintiff has stated a claim, the court may not look to the Martinez<sup>1</sup> report to refute facts specifically pled by plaintiff.

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<sup>1</sup> Martinez v. Aaron, 570 F.2d 317 (10<sup>th</sup> Cir. 1978).

Swobada v. Dubach, 992 F.2d 286, 290 (10<sup>th</sup> Cir. 1993). With respect to defendant Gonzaga’s qualified immunity defense, the court concurs with the analysis of Magistrate Judge Mitchell and need not repeat that analysis here. The court accepts, adopts and affirms the Report and Recommendation in its entirety.

The day before Magistrate Judge Mitchell issued the Report and Recommendation defendant, Christina Thomas, filed a Motion to Strike Doc. No. 32. That document is entitled “Plaintiff’s Opposition to Defendants Motion to Dismiss.” Defendant seeks to strike the document because plaintiff did not obtain leave of court to file the supplemental brief as required by LCvR 7.1(i). As Judge Mitchell did not consider this document in adjudicating defendants’ motions to dismiss, *see*, doc. no. 34, p. 1, and the court has not considered the document in its *de novo* review, the court finds that defendant’s motion should be denied as moot.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell on May 10, 2017 (doc. no. 34) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. The Motion to Dismiss of Defendant Mars Gonzaga, M.D., filed December 2, 2016 (doc. no. 19) and Defendant Christina Thomas’ Motion to Dismiss, filed December 5, 2016 (doc. no. 22) are **DENIED**. Defendant Christina Thomas’ Motion to Strike Doc. 32, filed May 9, 2017 (doc. no. 33), is **DENIED** as **MOOT**. This matter is re-referred to United States Magistrate Judge Suzanne Mitchell in accordance with 28 U.S.C. § 636 and the court’s prior order of referral (doc. no. 3).

IT IS SO ORDERED this 29<sup>th</sup> day of June, 2017.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE