

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 15-cv-02203-RM-KLM

SALVADOR MAGULTA,

Plaintiff,

v.

U.S. BUREAU OF PRISONS,  
CHARLES DANIELS, [former] Warden, FCC Florence,  
DAVID ALLRED, DO, [former], Clinical Director, FCC Florence,  
GEORGE SANTINI, MD, Clinical Director, FCC Florence,  
LISA MCDERMOTT, Assistant Health Services Administrator, FCC Florence,  
N. KIMBLE, Psychologist, FCC Florence,  
TERESA NEHLS, [former], Nurse Practitioner, FCC Florence,  
M. AMELIA WEISE, Legal Assistant, FCC Florence,  
NIXON ROBERTS, DDS, Dentist, FCC Florence, and  
JOHN DOE #1-15, Unknown Staff, FCC Florence,

Defendants.

---

**ORDER**

---

This matter is before the Court on the August 7, 2017 Recommendation of United States Magistrate Judge Kristen L. Mix (the “Recommendation”) (ECF No. 112) that Defendants’ Motion to Dismiss Fourth Amended Complaint (the “Motion”) (ECF No. 91) be granted in part and denied in part. The Recommendation is incorporated herein by reference. *See* 28 U.S.C. § 636(b)(1); 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. 112 at 20–21.) No objections to Magistrate Judge Mix’s Recommendation have been filed to date.

The Court concludes that Magistrate Judge Mix’s analysis was thorough and sound, and that there is no clear error of law or abuse of discretion. *See* FED. R. CIV. P. 72(b) advisory committee’s note (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”); *see also Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (“In the absence of timely objection, the district court may review a magistrate’s report under any standard it deems appropriate.”).

Accordingly, the Court ORDERS as follows:

(1) The Recommendation (ECF No. 112) is ACCEPTED as an Order of this Court, and accordingly, the Motion (ECF No. 91) is GRANTED in part and DENIED in part as follows:

(2) The Motion (ECF No. 91) is DENIED without prejudice in part<sup>1</sup> regarding:

- (i) Claim Two in full;
- (ii) Claims Four through Eight in full;
- (iii) Claim One for all official capacity claims, and for all individual capacity claims regarding any allegations occurring after August 19, 2013; and
- (iv) Claim Three for all official capacity claims, and for all individual claims regarding any allegations made except for those in paragraphs 96-109 and 111 of the Fourth Amended Complaint (ECF No. 87).

---

<sup>1</sup> This Court is aware the Recommendation “only addressed the merits of Claim One . . . and Claim Three . . . [against named Defendants] in their official and individual capacities[,]” on the basis Defendants, in the introduction to their Motion to Dismiss, aver, and later filed their Motion for Partial Summary Judgment Relating to Plaintiff’s Unexhausted Claims (ECF No. 104), which seeks partial summary judgment regarding Plaintiff’s alleged failure to exhaust his administrative remedies as to full and partial claims. (ECF No. 112 at 3, 5.) As such, the Recommendation denied without prejudice Defendants’ Motion to Dismiss to the exact extent Defendants raised the issue of exhaustion in the Motion for Partial Summary Judgment Relating to Plaintiff’s Unexhausted Claims (ECF No. 104.) The Recommendation then “turn[ed] to the remaining claims for which Defendants have not asserted the failure-to-exhaust defense, i.e., (1) allegations occurring before August 19, 2013 regarding Claim One and failure to treat kidney disease, and (2) paragraphs 96-109 and 111 of the Fourth Amended Complaint regarding Claim Three and failure to provide adequate dental care.” (ECF No. 112 at 6.)

(3) The Motion (ECF No. 91) is GRANTED in part and Plaintiff's Fourth Amended Complaint (ECF No. 87) is dismissed with prejudice as follows:

- (i) Claim One is dismissed as to Defendants Nehls, McDermott, and Daniels, in their individual capacities;<sup>2</sup>
- (ii) Claim One is dismissed in part as to Defendant Allred in his individual capacity;
- (iii) Claim Three is dismissed as to Defendants McDermott and Daniels in their individual capacities; and
- (iv) Claim Three is dismissed in part as to Defendant Roberts in his individual capacity.

Dated this 1st day of September, 2017.

BY THE COURT:



Raymond P. Moore  
United States District Judge

---

<sup>2</sup> The Court is aware the Recommendation dismisses Claim One as to Defendants Nehls, McDermott, and Daniels in their individual capacities only, and not their official capacities, notwithstanding the Recommendation's analysis as to the application of the statute of limitations barring conduct prior to October 5, 2013. (*See* ECF No. 112 at 15–16, 20.) Because no party objects to the Recommendation, or its decision to defer judgment as to certain claims in light of Defendants' pending dispositive motion on the issue of exhaustion, the Court does not address the issue herein.