

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

Civil Action No. 13-cv-01469-CMA-KLM

DAVID E. WILKINSON,

Plaintiff,

v.

STATE OF COLORADO, et al.,
MESA COUNTY, COLORADO, et al,

Defendants.

**ORDER ADOPTING AND AFFIRMING DECEMBER 14, 2013
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This case was referred to United States Magistrate Judge Kristen L. Mix pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72. (Doc. # 7.) On December 14, 2013, Judge Mix issued a Recommendation, advising that Plaintiff's claims be dismissed without prejudice. Specifically, Judge Mix found that (1) the claims against the State of Colorado are barred by the Eleventh Amendment to the U.S. Constitution (Doc. # 28 at 7-9); (2) this Court lacks jurisdiction over Mesa County because, pursuant to Colo. Rev. Stat. § 30-11-105, the county can only be sued by bringing an action against the Board of County Commissioners of the County of Mesa; (3) the Plaintiff's claims against the County are barred by the statute of limitations; and (4) the Plaintiff failed to satisfy Article III of the U.S. Constitution's standing requirements (*Id.*, at 9-13). On January 3, 2014, Plaintiff filed an objection to Judge Mix's Recommendation (Doc. # 29).

When a magistrate judge issues a recommendation on a dispositive matter, Fed. R. Civ. P. 72(b)(3) requires that the district judge “determine de novo any part of the magistrate judge’s [recommended] disposition that has been properly objected to.” In conducting its review, “[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” *Id.*

In the instant case, Plaintiff does not “properly object[]” to any part of the Recommendation. Instead, he merely reiterates the legal arguments and factual allegations included in his amended complaint. Therefore, these arguments were properly before Magistrate Judge Mix when she issued her Recommendation. Nonetheless, the Court has conducted a *de novo* review of this matter, including reviewing all relevant pleadings, the Recommendation, and Plaintiff’s objection thereto. Based on this *de novo* review, the Court concludes that Judge Mix’s Recommendation is correct and is not called into question by Plaintiff’s objection. However, the claims against Mesa County will be dismissed with prejudice, rather than without prejudice as recommended by Magistrate Judge Mix because those claims are barred by the statute of limitations.

Accordingly, it is hereby ORDERED that Plaintiff’s objection (Doc. # 29) is OVERRULED and the Recommendation of United States Magistrate Judge Kristen L. Mix (Doc. # 28) is AFFIRMED IN PART and ADOPTED IN PART as an Order of this Court. Pursuant to the Recommendation, it is

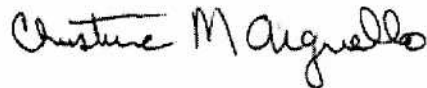
FURTHER ORDERED that Defendant State of Colorado's Motion to Dismiss (Doc. # 15) is GRANTED and Plaintiff's claims against the State of Colorado are DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.

IT IS FURTHER ORDERED that Defendant Mesa County's Motion to Dismiss (Doc. # 17) is GRANTED and Plaintiff's claims against Mesa County are DISMISSED WITH PREJUDICE as barred by the statute of limitations.

IT IS FURTHER ORDERED that this case is DISMISSED in its entirety.

DATED: January 10, 2014

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge