

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 07-cv-01497-PAB-KLM

ROSCOE WARE,

Plaintiff,

v.

RICHARD GALLEGOS,  
PAUL HOLLENBECK, and  
STATE OF COLORADO,

Defendants.

---

**ORDER**

---

This matter comes before the Court on the Recommendation of United States Magistrate Judge (“the Recommendation”) [Docket No. 36], which recommends that the Court grant defendants’ Motion to Dismiss Plaintiff’s Complaint [Docket No. 23] and dismiss this case with prejudice. By minute order dated July 2, 2008, pursuant to a notice of change of address filed by the plaintiff [Docket No. 38], the Court ordered that the clerk serve a copy of the Recommendation on plaintiff and gave plaintiff ten days after such service to file objections to the Recommendation. On July 16, 2008, plaintiff filed timely objections [Docket No. 42] to the Recommendation.

Where a party timely files objections to a magistrate judge’s recommended adjudication of a dispositive motion, the Court reviews the objected-to portion of the

recommendation de novo. Fed.R.Civ.P. 72(b). Plaintiff's objection states, in its entirety,

COMES NOW, Plaintiff Roscoe Ware, pro se, and formally objects to the United State's [sic] Magistrate Judge's findings pertaining to (1) the procedural barriers to his lawsuit, (2) the nature of the alledged [sic] wrongful conduct, and (3) the nature of the injury he suffered as a result of this conduct, and hereby requests leave to file an amended complaint within 45 days, as per her recommendations to this Court.

Having reviewed de novo the Recommendation, the complaint, the briefing surrounding the motion and the objection, and the relevant case law, I hereby accept the magistrate judge's thorough, thoughtful, and cogent Recommendation for all of the reasons stated therein.

The magistrate judge recommended that defendants' motion to dismiss be granted and that plaintiff's case be dismissed with prejudice, unless plaintiff filed an amended complaint curing the deficiencies noted herein within forty-five days of the date of the Recommendation (so long as it is accepted by the District Court). Although plaintiff did not file an amended complaint, he did seek leave to do so within the stated time period. See Objection to the Recommendation of the United States Magistrate Judge [Docket No. 42]. As a result, the Court grants plaintiff leave to file a motion to amend (with a proposed amended complaint attached). Given that plaintiff has had many months to prepare such an amended complaint, plaintiff must file it on or before **Monday, March 29, 2010**. Should plaintiff fail to do so or should that motion be denied under the applicable standard, this case will be dismissed.

Accordingly, it is

**ORDERED** that the Report & Recommendation of United States Magistrate Judge [Docket No. 36] is ACCEPTED. It is further

**ORDERED** that defendants' motion to dismiss [Docket No. 23] is GRANTED in part and conditionally DENIED in part. Plaintiff's claims are dismissed without prejudice. It is further

**ORDERED** that no judgment shall enter in this case at this time. Plaintiff is hereby granted leave to file a motion to amend his complaint (with a proposed amended complaint attached thereto) on or before **Monday, March 29, 2010**. Should plaintiff fail to do so or should such a motion be denied under the applicable standard, this case will be dismissed with prejudice and judgment shall enter in favor of all defendants on all of plaintiff's claims.

DATED March 3, 2010.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge