

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Robert E. Blackburn**

Civil Case No. 08-cv-00296-REB-MJW

JAMES R. DUNCAN,

Plaintiff,

v.

McGILL,  
SCOTT,  
COLE,  
ORTIZ,  
LAPORTE,  
DeCESARO, and  
DENNINGTON,

Defendants.

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**ORDER ADOPTING RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE JUDGE**

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**Blackburn, J.**

This matter is before me on the following: (1) the defendants' **Motion To Dismiss Complaint** [#40] filed June 19, 2008, 2008; and (2) the magistrate judge's **Recommendation on Motion To Dismiss Complaint** [#49] filed November 14, 2008.

The plaintiff filed a document captioned as **Motion for Reconsideration of Recommendation To Dismiss** [#50] filed November 25, 2008. The plaintiff objects to the bases cited by the magistrate judge in support of the recommendation that certain of the plaintiff's claims be dismissed. I read the plaintiff's motion for reconsideration [#50] as a statement of the plaintiff's objections to the magistrate judge's recommendation under 28 U.S.C. § 636(b)(1)(C) and FED. R. CIV. P. 72(b).

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and I have considered carefully the recommendation, objections, and applicable law. In addition, because the plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, \_\_\_, 127 S. Ct. 2197, 2200 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991). The recommendation is detailed and well-reasoned. Finding no error in the magistrate judge's reasoning and recommended disposition, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

**THEREFORE, IT IS ORDERED** as follows:

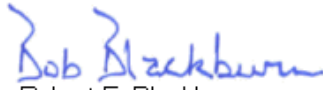
1. That the objections stated in the plaintiff's **Motion for Reconsideration of Recommendation To Dismiss** [#50] filed November 25, 2008, are **OVERRULED**;
2. That the magistrate judge's **Recommendation on Motion To Dismiss Complaint** [#49], filed November 14, 2008, is **APPROVED AND ADOPTED** as an order of this court;
3. That the defendants' **Motion To Dismiss Complaint** [#40] filed June 19, 2008, is **GRANTED IN PART** as follows;
4. That claims one, two, and five, as alleged in the plaintiff's complaint [#13] filed March 20, 2008, are **DISMISSED** under FED. R. CIV. P. 12(b)(6) for failure to state a claim on which relief can be granted;
5. That claim four, as alleged in the plaintiff's complaint [#13] filed March 20, 2008, is **DISMISSED** as to defendant, DeCessaro, under FED. R. CIV. P. 12(b)(6) for

failure to state a claim on which relief can be granted; and

6. That the defendants' **Motion To Dismiss Complaint** [#40] filed June 19, 2008, is **DENIED** otherwise.

Dated February 23, 2009, at Denver, Colorado.

**BY THE COURT:**

  
Robert E. Blackburn  
United States District Judge