

**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.

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

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 (10th 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