

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 08-cv-00649-LTB-MEH

DAVID EARL ANTELOPE,

Plaintiff,

v.

UNITED STATES OF AMERICA,
J.M. WILNER,
DR. POLLAND,
DR. KELLAR, and
SUSAN BONFIGLIO,

Defendants.

ORDER

This case is before me on the recommendation of the Magistrate Judge on Defendants' Partial Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc 93). The Recommendation was issued and served on July 20, 2009 (Doc 114). Plaintiff filed his Objection (Doc 115 - filed July 29, 2009) and Defendants filed their Response (Doc 118 - filed August 11, 2009). I therefore consider the recommendation *de novo* in light of the file and record in this case. On *de novo* review, I conclude that the Magistrate Judge's recommendation is correct. Accordingly,

IT IS ORDERED that Defendants' Partial Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(5) (Doc 93) is GRANTED. Defendants Wilner, Polland, and Bonfiglio are

dismissed from this action. Any claim in Plaintiff's Second Amended Complaint exceeding the scope of the District Court's February 25, 2009 Order are dismissed without prejudice.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Judge

DATED: August 17, 2009