

**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,
BUREAU OF PRISONS,
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 the United States, the Bureau of Prisons (BOP), and Kellar's Motion to Dismiss Prisoner Complaint (Doc 39) and on Defendants Wilner, Polland, and Bonfiglio's Motion to Dismiss Plaintiff's Amended Complaint (Doc 69). The Recommendation was issued and served on February 4, 2009 (Doc 81). Plaintiff has failed to file specific written objections to the Magistrate Judge's recommendation and is therefore barred from *de novo* review. Defendants filed an Objection (Doc 83) to the Recommendation indicating that they do not object to the dismissal of Claims Two and Three. They also stated that they do not object to dismissing Claim One with leave to replead, but only so long as Plaintiff's Second

Amended Complaint is limited to an Eighth Amendment claim that alleges sufficient facts to state Bivens claims against Defendants Wilner, Polland, Kellar, and Bonfiglio and an injunctive relief claim against the United States. Accordingly, it is

ORDERED that the recommendation is accepted as follows:

Defendants the United States, the Bureau of Prisons (BOP), and Kellar's Motion to Dismiss is granted in part and denied without prejudice in part as follows:

1. Plaintiff's Claims Two and Three are dismissed;
2. Plaintiff's Claim One against the BOP is dismissed;
3. Plaintiff's Claim One against Defendant Kellar in his official capacity is dismissed;
4. Plaintiff's Claim One for money damages against the United States is dismissed;
5. Plaintiff's Claim One for injunctive relief against Defendant Kellar is dismissed; and
6. Plaintiff is permitted to pursue his Claim One for money damages against Defendant Kellar in his individual capacity and for injunctive relief against the United States with an opportunity to submit a Second Amended Complaint describing the allegations with more specificity within thirty (30) days from the date of this Order.

Defendants Wilner, Polland, and Bonfiglio's Motion to Dismiss Plaintiff's Amended Complaint is granted in part and denied without prejudice in part as follows:

1. Plaintiff's Claims Two and Three are dismissed;
2. Plaintiff's Claim One for injunctive relief against Defendants Wilner, Polland, and Bonfiglio are dismissed;
3. Plaintiff's Claim One against Defendants Wilner, Polland, and Bonfiglio in their official capacities are dismissed; and

4. Plaintiff is permitted to pursue his Claim One for money damages against Defendants Wilner, Polland, and Bonfiglio in their individual capacities with an opportunity to submit a Second Amended Complaint describing the allegations with more specificity within thirty (30) days from the date of this Order.

BY THE COURT:

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

DATED: February 25, 2009