

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Boyd N. Boland

Civil Action No. 08-cv-01047-PAB-BNB

JEFFREY D. FOX,

Plaintiff,

v.

CALIFORNIA FRANCHISE TAX BOARD, et al.,

Defendants.

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**RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

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This matter arises on two motions filed by the plaintiff (the “Motions”):

1. **Motion to Amend Complaint** [Doc. #55, filed 02/18/2009], and
2. **Motion to Amend Complaint (#4) (Rule 15(a))** [Doc. # 59, filed 02/27/2009].

I respectfully RECOMMEND that the Motions be DENIED.

The plaintiff seeks leave to amend his Amended Complaint to add as a defendant the Judicial Council of California and to add claims under California’s Information Practices Act of 1977, Cal.Civ.Code § 1798 *et seq.*, and the California Fair Debt Collection Practices Act. He has tendered a proposed second amended complaint [Doc. #67].

Rule 15, Fed.R.Civ.P., provides that a complaint may be amended once as a matter of course if a responsive pleading has not been served. Fed.R.Civ.P. 15(a)(1)(A). Ordinarily, under Rule 15(a) the plaintiff would be permitted to amend his Complaint as of right because a

responsive pleading has not yet been served.<sup>1</sup> In this case, however, I have issued three separate recommendations wherein I have recommended dismissal of the claims against defendants County of Orange - California, Board of Supervisors; Thomas G Mauk, CEO - County of Orange, California; John M. W. Moorlach; Patricia C. Bates; Janet Nguyen; Bill Campbell; Chris Norby; SchoolsFirst Federal Credit Union; Lisa Mitchell; Fabiola Guillen; and AllianceOne Receivables Management, Inc.

The plaintiff's proposed second amended complaint reasserts the same claims against these defendants. Accordingly, I respectfully recommend that the Motions be denied without prejudice, subject to refile of a proposed second amended complaint in accordance with the district judge's rulings on the recommendations.

I respectfully RECOMMEND that the Motions be DENIED WITHOUT PREJUDICE.

FURTHER, IT IS ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have 10 days after service of this recommendation to serve and file specific, written objections. A party's failure to serve and file specific, written objections waives *de novo* review of the recommendation by the district judge, Fed.R.Civ.P. 72(b); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. In re Key Energy Resources Inc., 230 F.3d 1197, 1199-1200 (10<sup>th</sup> Cir. 2000). A party's objections to this recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review. United States v. One Parcel of Real Property, 73 F.3d 1057, 1060 (10<sup>th</sup> Cir. 1996).

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<sup>1</sup>The defendants' motions to dismiss are not responsive pleadings. Cooper v. Shumway, 780 F.2d 27, 29 (10<sup>th</sup> Cir. 1985).

Dated September 24, 2009.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge