

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

Civil Case No. 08-cv-02000-REB-KLM

DARRYL EDMOND THOMPSON,

Plaintiff,

v.

BURL McCULLAR, LPC, Employee #2050, S.O.T.M.P. Program QA Specialist, and
RICHARD LINS, LPC, Contract Worker #3464, S.O.T.M.P. Program QA Specialist,

Defendants.

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

Blackburn, J.

This matter is before me on (1) the defendants' **Motion To Dismiss Pursuant To FED. R. CIV. P. 12(b)(6)** [#20] filed February 9, 2009; and (2) the **Recommendation of United States Magistrate Judge** [#37] filed May 12, 2009. The defendants filed objections [#39] to the recommendation. I overrule the objections, approve and adopt the recommendation, grant the motion to dismiss in part and deny the motion to dismiss in part.

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 case law. In addition, because the plaintiff is proceeding *pro se*, I have construed his filings generously and with the leniency due *pro se* litigants. **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).

As the magistrate judge notes, if a complaint includes factual allegations which, taken as true, provide plausible grounds that discovery will reveal evidence to support the plaintiff's claims, then a motion to dismiss under FED. R. CIV. P. 12(b)(6) must be denied. The defendants object to the magistrate judge's conclusions concerning the applicability of the "favorable termination" rule in this case. **See, e.g., Heck v. Humphrey**, 512 U.S. 477, 486 - 487(1994). The defendants object also to the magistrate judge's conclusion that, assuming the facts alleged in the complaint to be true, the defendants are not entitled to qualified immunity. Applying the standard applicable under FED. R. CIV. P. 12(b)(6), I agree with the magistrate judge's conclusions. Proper resolution of these issues will be possible only with the presentation of evidence relevant to the plaintiff's claims. Standing alone, the plaintiff's allegations in his complaint are sufficient.

Having reviewed the record in this case, including the recommendation and the defendants' objections, I find and conclude that the magistrate judge's conclusions of law and recommended disposition of the motion to dismiss are correct. I find and conclude also that the defendants' objections to the recommendation are without merit.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#37] filed May 12, 2009, is **APPROVED** and **ADOPTED** as an order of this court;

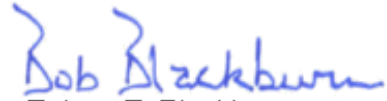
2. That the defendants' objections [#39] filed May 26, 2009, are **OVERRULED**;

3. That the defendants' **Motion To Dismiss Pursuant To FED. R. CIV. P. 12(b)(6)** [#20] filed February 9, 2009, is **GRANTED** as to the plaintiff's claim for monetary damages;

4. That the defendants' **Motion To Dismiss Pursuant To FED. R. CIV. P. 12(b)(6)** [#20] filed February 9, 2009, otherwise is **DENIED**.

Dated September 8, 2009, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge