

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

Civil Case No. 08-cv-02110-LTB-MEH

BART KIMBER,

Plaintiff,

v.

TIM HOOVER,
RICHARD KAZITS,
DEAN KING,
TRACY GRANT, and
BILL FRANKLE,

Defendants.

ORDER

This case is before me on the recommendation of the Magistrate Judge on Defendants' Motion to Substitute the United States of America as the proper party defendant (Doc 39) and Defendants' Motion to Dismiss Plaintiff's Third Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Doc 40). The Recommendation was issued and served on July 29, 2009 (Doc 62). Plaintiff has filed his timely objection to the recommendation (Doc 66 - filed August 10, 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' Motion to Substitute the United States of America (Doc 39) is GRANTED.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Doc 40) is GRANTED and Plaintiff's claims asserted in the Third Amended Complaint are DISMISSED WITHOUT PREJUDICE for the Court's lack of subject matter jurisdiction.

BY THE COURT:

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

DATED: August 27, 2009