

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

Civil Case No. 08-cv-02117-REB-KLM

EMMANUEL SANAAH,

Plaintiff,

v.

NURSE DEBB HOWELL,
WARDEN ARELLANO,
MAJOR SCOTT GROVER, Life Safety Cordinator [sic] and Maintenance Supervisor,
and
MAINTENANCE WORKER LT. BOSLEY,

Defendants.

**ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the **Recommendation of United States Magistrate Judge** [#75] filed September 14, 2009; and (2) plaintiff's "**Objection to the Recommendation To Dismiss the Entirety of Plaintiffs (sic) Claims**" [#86] filed October 26, 2009. I overrule the objections, adopt the recommendation, and grant defendants' motion to dismiss.

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 have considered carefully the recommendation, objections, and applicable caselaw. Moreover, because plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See Erickson v. Pardus**,

551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); **Andrews v. Heaton**, 483 F.3d 1070, 1076 (10th Cir. 2007); **Hall v. Belmon**, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing **Haines v. Kerner**, 404 U.S. 519, 520-21 (1972)). The recommendation is detailed and well-reasoned. Contrastingly, plaintiff's objections are imponderous and without merit.

Therefore, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.¹

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#75] filed September 14, 2009, is **APPROVED AND ADOPTED** as an order of this court;
2. That the objections stated in plaintiff's "**Objection to the Recommendation To Dismiss the Entirety of Plaintiffs [sic] Claims**" [#86] filed October 26, 2009, are **OVERRULED**;
3. That defendants' **Motion To Dismiss Second Amended Complaint** [#51] filed June 26, 2009, is **GRANTED**;
4. That plaintiff's claims seeking monetary damages against defendants in their official capacities are **DISMISSED WITH PREJUDICE** for lack of subject matter jurisdiction;

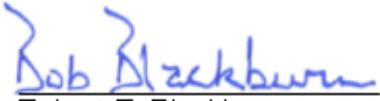
¹ Although the magistrate judge recommends that all plaintiff's claims be dismissed with prejudice, because it is not clear that amendment would be utterly futile, I find that the dismissal of the claims against defendants in their individual capacities should be without prejudice. **Brereton v. Bountiful City Corp.**, 434 F.3d 1213, 1219 (10th Cir. 2006). Conversely, because the court lacks subject matter jurisdiction over the official capacity claims for monetary damages, those claims are properly dismissed with prejudice.

5. That judgment **SHALL ENTER** for defendants, Nurse Debb Howell, Warden Arellano, Major Scott Grover, Life Safety Coordinator and Maintenance Supervisor, Maintenance Worker Lt. Bosley, and Aristedes Zavaras, against plaintiff, Emmanuel Sanaah, on plaintiff's claims seeking monetary damages against defendants in their official capacities; and

6. That plaintiff's claims for injunctive relief against defendants in their official capacities, as well as all claims against defendants in their individual capacities, are **DISMISSED WITHOUT PREJUDICE** for failure to state claims on which relief may be granted.

Dated November 23, 2009, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge