

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02421-CMA-CBS

MICHAEL P. MAROTTA,
Plaintiff,

v.

CORTEZ, individually and in his official capacity as a Denver Police Officer,
BLACK, individually and in her official capacity as a Denver Police Officer,
ROCCO-MCKEEL, individually and in his official capacity as a Denver Police Officer,
THE DENVER POLICE DEPARTMENT,
THE CITY AND COUNTY OF DENVER, and
PATRICK SORAN, a private individual,
Defendants.

ORDER

Magistrate Judge Craig B. Shaffer

This civil action comes before the court regarding Mr. Marotta's "Request to File Fifth Amended Complaint" (filed November 30, 2009) (doc. # 92) (docketed by the Clerk of the Court as "Motion to File Fifth Amended Complaint"). Pursuant to the Order of Reference dated November 12, 2008 (doc. # 10) and the memorandum dated November 30, 2009 (doc. # 94), Mr. Marotta's Motion was referred to the Magistrate Judge. The court has reviewed the Motion, the tendered Fifth Amended Complaint (doc. # 93), Defendants' Response (filed December 7, 2009) (doc. # 95), the entire case file, and the applicable law and is sufficiently advised in the premises.

Mr. Marotta seeks leave to amend his Fourth Amended Complaint and file a Fifth Amended Complaint. Currently pending is the Recommendation of United States Magistrate Judge addressing the Fourth Amended Complaint, recommending that the First, Second, Fourth, Fifth, and Sixth Claims for Relief be dismissed, Defendants Cortez, Black, the Denver Police Department, and Patrick Soran be dismissed, and this civil action proceed against Defendants Rocco-McKeel and the City and County of Denver on the Third Claim for Relief only. (See doc. # 87). Mr. Marotta has filed an Objection to the

Recommendation and a Supplement to his Objection. (See docs. # 88 and # 90). Mr. Marotta's proposed Fifth Amended Complaint reasserts claims against Defendants that are addressed in the Recommendation. In the interests of efficiency and economy for all parties, Mr. Marotta's request to further amend his pleadings is better addressed after the District Judge's decision regarding the Recommendation and Mr. Marotta's objections to the Recommendation.

Accordingly, Mr. Marotta's "Request to File Fifth Amended Complaint" (filed November 30, 2009) (doc. # 92) is DENIED WITHOUT PREJUDICE, with leave to refile the request after and in accordance with the District Judge's ruling on the pending Recommendation.¹

DATED at Denver, Colorado, this 20th day of January, 2010.

BY THE COURT:

s/Craig B. Shaffer
United States Magistrate Judge

¹ As the court's denial without prejudice of the motion to amend does not remove any claim or defense from the case, it is a nondispositive ruling. See *Cuenca v. Univ. of Kansas*, 205 F. Supp. 2d 1226, 1228 (D. Kan. 2002) (ruling on a motion to amend is a nondispositive decision particularly when the Magistrate Judge grants the motion); *Pedro v. Armour Swift-Eckrich*, 118 F. Supp. 2d 1155, 1157 (D. Kan. 2000) (suggesting that an order denying a motion to amend may be dispositive for purposes of Fed. R. Civ. P. 72 and 28 U.S.C. § 636(b)(1) if the order effectively removes a claim or defense from the action); *Stetz v. Reeher Enters., Inc.*, 70 F. Supp. 2d 119, 120 (N.D.N.Y.1999) ("Orders granting leave to amend are nondispositive, as they do not remove claims or defenses of a party") (quotation omitted).