

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Christine M. Arguello**

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 his 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.

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**ORDER ADOPTING AND AFFIRMING NOVEMBER 3, 2009  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

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The above-entitled and numbered civil action was referred to United States Magistrate Judge Craig B. Shaffer pursuant to 28 U.S.C. § 636. On November 3, 2009, the Magistrate Judge issued a Report and Recommendation, recommending Defendants' Motions to Dismiss be granted and Plaintiff's Motion for Summary Judgment be denied. (Doc. # 87.) Plaintiff, proceeding *pro se*, filed objections to the Report and Recommendation. (Doc. # 88.) However, Plaintiff merely asserts the same arguments that he presented in opposition to Defendants Motions' to Dismiss, *i.e.*, he does not raise any new legal or factual issues in his Objection. The Court has conducted a *de novo* review of this matter, including carefully reviewing all relevant pleadings, the Report and Recommendation, Plaintiff's Objections to the Report and

Recommendation, and Defendants' Responses to Plaintiff's objections. The Court agrees with Defendants that Plaintiff fails to raise any new issues of law or fact warranting a result different from that reached by the Magistrate Judge in his Report and Recommendation.

The Court finds Plaintiff's objections are without merit. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby ADOPTS the Report of the United States Magistrate Judge as the findings and conclusions of this Court.

Accordingly, IT IS ORDERED that:

1. Defendants' Cortez's and Black's Motion to Dismiss All Claims Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. # 59) is GRANTED. The Fourth Amended Complaint against Defendants Cortez and Black is dismissed for failure to state a claim upon which relief can be granted and Defendants Cortez and Black are DISMISSED WITH PREJUDICE from this civil action.
2. Defendants Rocco-McKeel's and the City and County of Denver's Partial Motion to Dismiss Claims Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. # 60) is GRANTED. The First, Second, Fourth, Fifth, and Sixth Claims for Relief of Plaintiff's Fourth Amended Complaint are DISMISSED WITH PREJUDICE as to Defendants Rocco-McKeel and the City and County of Denver for failure to state a claim upon which relief can be granted.
3. Defendant Denver Police Department's Motion to Dismiss All Claims Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. # 61) is GRANTED. Defendant Denver Police

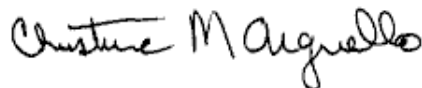
Department is DISMISSED WITH PREJUDICE from this civil action because it is not an entity subject to suit.

4. Defendant Patrick Soran's Motion to Dismiss Plaintiff's Fourth Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. # 64) is GRANTED. The Fourth Amended Complaint against Defendant Patrick Soran is dismissed for failure to state a claim upon which relief can be granted. Defendant Patrick Soran is DISMISSED WITH PREJUDICE from this civil action. Because Mr. Marotta's claims against Mr. Soran have no basis in law or in fact, Mr. Soran may seek both costs and reasonable attorney fees by filing a motion in accordance with Fed. R. Civ. P. 54.
5. Plaintiff Mr. Marotta's Motion for Summary Judgment Pertaining to Defendant Soran (Doc. # 80) is DENIED.

In summary, this civil action proceeds against Defendants Rocco-McKeel and the City and County of Denver on the Third Claim for Relief only. It is ORDERED that the caption on all subsequent filings shall reflect the removal of Denver Police Officers Cortez and Black, the Denver Police Department, and Patrick Soran as Defendants in this case.

DATED: February 16, 2010

BY THE COURT:



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CHRISTINE M. ARGUELLO  
United States District Judge