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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02534-BNB

TAWNYA GOETZ,  
DEBORAH WAY,  
MONICA FISHER,  
MAEGHAN DODGE,  
KATHLEEN CLARK,  
TESSIE KING,  
KATHERINE FISHER, and  
HEATHER POWERS,

Plaintiff,

v.

ARISTEDES ZAVARAS, In his Individual and Official Capacity,  
LARRY REID, In his Individual and Official Capacity,  
LAURIE McGOWAN, In his Individual and Official Capacity,  
GLEN SCHAFFER, In his Individual and Official Capacity,  
BETH HOLLOWAY, In his Individual and Official Capacity,  
STEVEN OWENS, In his Individual and Official Capacity,  
BARBARA ROOT, In his Individual and Official Capacity,  
J. SCOLERI, In his Individual and Official Capacity,  
S. HUGHBANKS, In his Individual and Official Capacity,  
DARLA PACHECO, In his Individual and Official Capacity,  
STEVEN OWENS, In his Individual and Official Capacity,  
MACK MARTINEZ, In his Individual and Official Capacity,  
BRYAN DUPPS, In his Individual and Official Capacity,  
SAMUEL JARAMILLO, In his Individual and Official Capacity, and  
C. CROCKETT, In his Individual and Official Capacity,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

SEP - 2 2009

GREGORY C. LANGHAM  
CLERK

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ORDER TO DRAW IN PART AND TO DISMISS IN PART

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Plaintiffs originally filed a *pro se* Prisoner Complaint. At the time Plaintiffs initiated the instant action, all of them were in the custody of the Colorado Department of Corrections (DOC) and were incarcerated at the La Vista Correctional Facility in Pueblo, Colorado. After all Plaintiffs had submitted proper Motions and Affidavits for

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Leave to Proceed Pursuant to 28 U.S.C. § 1915, the Court entered an order denying Plaintiffs leave to proceed pursuant to § 1915, because Plaintiff April Pope had over \$1,000.00 in her inmate account. On May 13, 2009, Plaintiff Katherine Fisher paid the \$350.00 filing fee in full.

On May 21, 2009, Magistrate Judge Boyd N. Boland entered an order instructing Plaintiffs to file a Second Amended Prisoner Complaint and assert personal participation by all named Defendants. On June 22, 2009, Attorney Angelique Layton Anderson entered an appearance on behalf of Plaintiffs and requested an extension of time to file a Second Amended Complaint. Magistrate Judge Boland granted the request for an extension of time. On July 20, 2009, Plaintiffs filed a second request for an extension of time to file a Second Amended Complaint. Again, Magistrate Judge Boland granted the request. Subsequently, on August 19, 2009, Plaintiffs, through counsel, filed a Second Amended Complaint.

In the Second Amended Complaint, Plaintiffs raise three claims. In Claim One, they assert that they were terminated from their employment without due process, placed on restricted privileges, and deprived of good-time credits. Plaintiffs further assert that the placement on restricted privileges is in violation of the DOC Administrative Regulations and deprives them of their substantive and due process rights under the Fourteenth Amendment. Plaintiffs contend that case managers and officers ignored the requirement that Plaintiffs be provided with a hearing prior to being placed on restricted privileges. Plaintiffs further contend that Defendants Aristedes Zavaras and Larry Reid were deliberately indifferent to Plaintiffs' due process rights and failed to institute proper policies and practices and proper hiring, training, and supervising procedures.

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In Claim Two, Plaintiffs assert that their access to all media, including television, radio, and newspapers, has been limited severely. Plaintiffs contend that Defendants Zavaras and Reid were deliberately indifferent to their right to reasonable access to television, radio, and newspapers, and to the consequences that they could suffer by failing to institute proper policies. Plaintiffs further contend that Defendants Zavaras and Reid failed to pursue reasonable methods for hiring, training, and supervising employees.

In Claim Three, Plaintiffs assert that their equal protection rights have been violated because they were punished and placed on restricted privileges by Defendant case managers and officers, when other inmates committing the same violations were not punished or placed on restricted privileges. Again, Plaintiffs contend that Defendants Zavaras and Reid have failed to institute proper policies and practices and proper hiring, training, and supervising procedures. Plaintiffs seek money damages.

Plaintiffs have failed to comply with Magistrate Judge Boland's May 21, 2009, Order directing them to amend and to clarify in each claim who they are suing and allege "specific facts that demonstrate how each named Defendant personally participated in the asserted constitutional violation of each named Plaintiff." (Doc. # 82 at 3.) Simply stating that named Defendant case managers and officers have assigned inmates to restricted privileges based on inadequate policies and procedures does not meet the standard set forth in *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10<sup>th</sup> Cir. 2007), for alleging personal participation. Plaintiffs do assert, however, that Defendants Zavaras and Reid are responsible for the policies, practices, and procedures that apparently pertain to their access to media and arbitrary placement on restricted privileges without due process and in violation of their equal protection

protection rights. Therefore, the Complaint as asserted against Defendants Zavaras and Reid will be drawn to a district judge and to a magistrate judge. The remaining Defendants will be dismissed from the action, because Plaintiffs have failed to assert, in keeping with *Nasious*, how these Defendants personally participated in violating their constitutional rights. Accordingly, it is

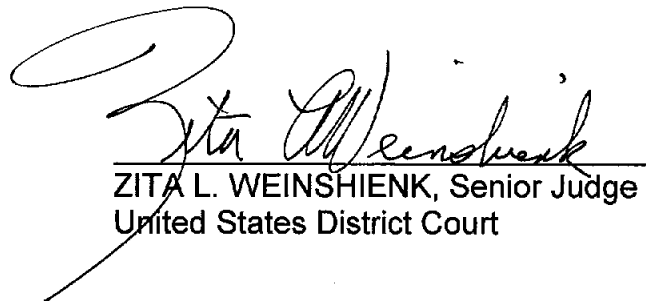
ORDERED that Defendants Laurie McGowan, Glen Schaffer, Beth Holloway, Steven Owens, Barbara Root, J. Scoleri, S. Hughbanks, Darla Pacheco, Steven Owens, Mack Martinez, Bryan Dupps, Samuel Jaramillo, and C. Crockett, are dismissed from the action for the reasons set forth above in this Order. It is

FURTHER ORDERED that the Clerk of the Court is directed to terminate Defendants Laurie McGowan, Glen Schaffer, Beth Holloway, Steven Owens, Barbara Root, J. Scoleri, S. Hughbanks, Darla Pacheco, Steven Owens, Mack Martinez, Bryan Dupps, Samuel Jaramillo, and C. Crockett as parties to this action. It is

FURTHER ORDERED that the Complaint as asserted against Defendants Aristedes Zavaras and Larry Reid shall be drawn to a district judge and to a magistrate judge.

DATED at Denver, Colorado, this 1st day of Sept., 2009.

BY THE COURT:

  
ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 08-cv-02534-BNB

Angelique Anderson  
Attorney at Law

**DELIVERED ELECTRONICALLY**

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 9/2/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk