

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 09-cv-00426-WYD-BNB

VINCENT GAGLIARDI,

Plaintiff,

v.

OFFICER, DAN DURAN;
OFFICER, ARCHIE VIGIL;
OFFICER GABE VAZQUEZ;
CITY MANAGER, JIM SOLTIS;
OFFICER BRANDON BARRY; and
CHIEF OF POLICE, CHARLES GLORIOSO,

Defendants.

**ORDER AFFIRMING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court on Plaintiff's *pro se* Motion to Amend Amended Complaint, filed October 7, 2009 [#67]. The motion to amend was referred to United States Magistrate Judge Boyd N. Boland, on October 8, 2009, and on October 22, 2009, Magistrate Judge Boland issued a Recommendation that the motion to amend be denied [#75] ("Recommendation"), which is incorporated herein by reference. See 28 U.S.C. § 636(b), Fed. R. Civ. P. 72, D.C.COLO.LCivR. 72.4. In the Recommendation, Magistrate Judge Boland notes that he directed Plaintiff to file a motion to amend with a corrected proposed second amended complaint on or before October 12, 2009. While Plaintiff filed a motion to amend, his proposed second

amended complaint fails to name in the caption the parties against whom Plaintiff seeks relief. Plaintiff was specifically instructed that the only parties in the suit are those named in the caption.

On October 27, 2009, Plaintiff filed an Objection to the Recommendation [#78]. Because Plaintiff has filed a timely Objection, I must review the magistrate judge's Order to determine whether it is "clearly erroneous or contrary to law" since the nature of the matter is nondispositive. Fed. R. Civ. P. 72(a). "An order is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Cook v. Rockwell Int'l Corp.*, 147 F.R.D. 237, 242 (D. Colo. 1993). Upon review of the proposed amended complaint, it is clear that Plaintiff has failed to list in the caption all of the parties who are named as 'defendants' in the body of the proposed amended complaint, including the City of Trinidad. Under these circumstances, Magistrate Judge Boland's decision to deny Plaintiff's motion to amend was correct, and was not clearly erroneous or contrary to law.

For the reasons outlined above, the Recommendation of Magistrate Judge Boland, issued October 22, 2009 [#75] is **AFFIRMED and ADOPTED**. Accordingly, it is

ORDERED that Plaintiff's *pro se* Motion to Amend Amended Complaint, filed October 7, 2009 [#67] is **DENIED**.

Dated: November 19, 2009

BY THE COURT:

s/ Wiley Y. Daniel

Wiley Y. Daniel
U. S. District Judge