

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.

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

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THIS MATTER is before the Court in connection with Defendants' Motion to Dismiss, filed October 14, 2009 [#69], and Plaintiff's proposed second amended complaint, tendered on December 4, 2009 [#87]. The motion was referred to Magistrate Judge Boland for a Recommendation by Memorandum dated October 14, 2009.

A Recommendation of United States Magistrate Judge was issued on May 25, 2010 [#90], and is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). Magistrate Judge Boland recommends therein that Defendants' motion be granted, and that Plaintiff's attempt to file a second amended complaint be denied. *Recommendation* at 17. Specifically, Magistrate Judge Boland recommends

that Plaintiff's first claim be dismissed as redundant of claims two, three, and four; that Plaintiff's second claim be dismissed for failure to allege a constitutional violation; and that his third claim be dismissed for failure to allege any facts to support a plausible claim that his arrest and detention violated his constitutional rights. *Recommendation* at 8, 12-14. Magistrate Judge Boland recommends that these claim be dismissed with prejudice. *Recommendation* at 17. As to Plaintiff's remaining state law tort claims, Magistrate Judge Boland recommends that the court decline to exercise supplemental jurisdiction over these claims, and dismiss them without prejudice pursuant to 28 U.S.C. § 1367(c)(3). *Recommendation* at 14. Finally, Magistrate Judge Boland recommends rejecting Plaintiff's tendered second amended complaint because it is based on acts and omissions known to Plaintiff at the time he filed his amended complaint, and because it would be futile to allow Plaintiff to add additional state law tort claims and to name the City of Trinidad as a defendant. *Recommendation* at 16-17.

Magistrate Judge Boland advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. *Recommendation* at 17. Despite this advisement, no objections were filed by any party to the Magistrate Judge's Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those

findings”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”<sup>1</sup> See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Judge Boland that Plaintiff has failed to state a claim for relief as to his first, second and third claims. I also agree that I should decline to exercise supplemental jurisdiction over Plaintiff’s remaining state law tort claims. I further agree that Plaintiff’s tendered second amended complaint should be denied. Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated May 25, 2010 [#90], is **AFFIRMED and ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendants’ Motion to Dismiss, filed October 14, 2009 [#69] is **GRANTED**. It is

FURTHER ORDERED that Claims One, Two, and Three of the Amended Complaint are **DISMISSED WITH PREJUDICE**. It is

FURTHER ORDERED that Claims Four, Five, Six, Seven, and Eight of the Amended Complaint are **DISMISSED WITHOUT PREJUDICE**. It is

FURTHER ORDERED that Plaintiff’s proposed second amended complaint, tendered on December 4, 2009 [#87] is **DENIED**.

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<sup>1</sup> Note, this standard of review is something less than a “clearly erroneous or contrary to law” standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review, Fed. R. Civ. P. 72(b).

Dated: June 21, 2010

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Chief United States District Judge