

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 09-cv-02498-REB-MEH

GIOVANNI LARATTA

Plaintiff,

v.

ARISTEDES W. ZAVARAS,
ROBERT ALLEN,
CHRIS BARR, and
SUSAN JONES

Defendant.

ORDER ADOPTING RECOMMENDATIONS OF MAGISTRATE JUDGE

Blackburn, J.

This matter is before me on the following: (1) the plaintiff's **Memorandum of Law in Support of Order To Show Cause for a Preliminary Injunction** [#12]¹ filed January 19, 2010; (2) the defendants' **Motion To Dismiss** [#16] filed January 25, 2010; (3) the magistrate judge's **Recommendation on Motion for Preliminary Injunction** [#39] filed April 20, 2010; (4) the plaintiff's **Motion for Leave To File an Amended Complaint** [#40] filed May 6, 2010; (5) the magistrate judge's **Recommendations on Motion To Dismiss and Motion To Amend** [#51] filed June 14, 2010. I approve and adopt both recommendations, deny the motion for preliminary injunction, grant the motion to dismiss in part, deny the motion to dismiss in part, grant the motion to amend the complaint in part, and deny the motion to amend the complaint in part.

¹ "[#12]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

Because the plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991). No objections to the recommendations have been filed and, therefore, I review the recommendations only for plain error. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005).² Finding no error, much less plain error, in the magistrate judge's recommended dispositions, I find and conclude that the recommendations should be approved and adopted.

The plaintiff is an inmate in the Colorado Department of Corrections (DOC). He alleges that restrictions on the mail he is permitted to receive while incarcerated in the DOC violate his rights under the First Amendment. I agree with the magistrate judge's detailed analysis of the issues raised by and inherent to the plaintiff's motion for preliminary injunction [#12], the defendants' motion to dismiss [#16], and the plaintiff's motion to amend his complaint [#40].

THEREFORE, IT IS ORDERED as follows:

1. That the magistrate judge's **Recommendation on Motion for Preliminary Injunction** [#39] filed April 20, 2010, is **APPROVED AND ADOPTED** as an order of this court;
2. That the plaintiff's **Memorandum of Law in Support of Order To Show Cause for a Preliminary Injunction** [#12] filed January 19, 2010, is **DENIED**;
3. That the magistrate judge's **Recommendations on Motion To Dismiss and**

² This standard pertains even though plaintiff is proceeding *pro se* in this matter. ***Morales-Fernandez***, 418 F.3d at 1122.

Motion To Amend [#51] filed June 14, 2010, is **APPROVED AND ADOPTED** as an order of this court;

4. That the defendants' **Motion To Dismiss** [#16] filed January 25, 2010, is **GRANTED IN PART** and **DENIED IN PART** as follows:

- a. **GRANTED** as to the plaintiff's claims for compensatory damages for mental or emotional injuries, if any;
- b. **GRANTED** as to the plaintiff's claims against defendants in their official capacities, if any;
- c. **GRANTED** as to the plaintiff's claims against defendants Allen and Zavaras in their individual capacities;
- d. **GRANTED** as to the plaintiff's claim against defendant Jones regarding application of CDOC Administrative Regulation 850-6 in the denial of a grievance filed by the plaintiff; and
- e. **DENIED** as to the plaintiff's claim against defendant Jones regarding the "implementation adjustment" and "operational memorandum";

5. That the plaintiff's **Motion for Leave To File an Amended Complaint** [#40] filed May 6, 2010, is **GRANTED IN PART** and **DENIED IN PART** as follows:

- a. **DENIED** as to the plaintiff's request to amend his claims against defendants Barr, Allen and Zavaras;
- b. **DENIED** as to the plaintiff's request to amend his claim against defendant Jones regarding application of CDOC Administrative Regulation 850-6;
- c. **GRANTED** as to the plaintiff's request to amend his claim against defendant Jones regarding the "implementation adjustment" and

“operational memorandum”; and


d. **GRANTED** as to the plaintiff’s request to amend his complaint to add a claim against proposed defendant Jim Brown;

6. That I **REFER** to the magistrate judge any necessary determination of whether and how the plaintiff should be required to file an amended complaint consistent with these orders; and

7. That because these rulings resolve all claims asserted against defendants Aristedes W. Zavaras and Robert Allen, those defendants are **DROPPED** from this action, and the caption of this case shall be **AMENDED** accordingly.

Dated September 13, 2010, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge