

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 09-cv-02550-RPM

STEPHEN J. HOLLAND,

Plaintiff,

v.

RODNEY JOHNSON, Individually and in his Official Capacity as Sheriff, Grand County,
Colorado, and
WALTER P. ELDRIDGE, Individually and in his Official Capacity as Under Sheriff,
Grand County, Colorado,

Defendants

ORDER DISMISSING FOURTH AND FIFTH CLAIMS FOR RELIEF

Upon consideration of the defendants' motion to dismiss the fourth and fifth claims for relief based on the lack of subject matter jurisdiction because these state law claims were not the subject of a notice of claim under the Colorado Governmental Immunity Act, C.R.S. § 24-10-109 and after reviewing the plaintiff's response, the Court finds and concludes that the defendants' motion should be granted. To assert that the immunity statute is not applicable because the defendants were not acting within the scope of their authority is inconsistent with the plaintiff's claim of infringement of a liberty interest protected by the Fourteenth Amendment to the United States Constitution and actionable under 42 U.S.C. § 1983 in the third claim for relief. Additionally, if the plaintiff asserts that the defendants were not acting within the scope of their authority, the fourth and claims are not a part of the same case or controversy which would support supplemental jurisdiction under 28 U.S.C. § 1367. Accordingly, it is

ORDERED that the fourth and fifth claims for relief in the complaint are

dismissed for lack of subject matter jurisdiction.

DATED: December 10th, 2009

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge