

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 10-cv-02207-CMA-MJW

SHAWN D. ALLEN,

Plaintiff,

v.

N. ALLEN,
C. FLORY,
A. COSNER,
K. NORDELL,
A. MEDINA,
K. SOKOL, and
C. TUTTLE,

Defendants.

**ORDER AFFIRMING JUNE 2, 2011 ORDER OF UNITED STATES MAGISTRATE
JUDGE (DOC. # 51), ADOPTING AND AFFIRMING JULY 13, 2011
RECOMMENDATION OF MAGISTRATE JUDGE (DOC. # 60), AND GRANTING
PLAINTIFF'S MOTION TO WITHDRAW DOCUMENT (DOC. # 72)**

This case was referred to United States Magistrate Judge Michael J. Watanabe pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72. (Doc. # 7.) The Magistrate Judge has issued two Recommendations and one Minute Order concerning three motions filed by *pro se* Plaintiff.

The Magistrate Judge issued his first Recommendation on June 2, 2011 (Doc. # 50), in which he recommended that Plaintiff's Motion for Temporary Restraining Order ("TRO") be denied. Plaintiff filed his objections to that Recommendation on June 16, 2011. Plaintiff has since filed a Motion to Withdraw his Motion for TRO. (Doc. # 72.)

Thus, the Court GRANTS the Motion to Withdraw (Doc. # 72) and DENIES AS MOOT Plaintiff's Motion for TRO (Doc. # 48).

The Magistrate Judge issued another Recommendation on July 13, 2011 (Doc. # 60), in which he recommended that Plaintiff's Motion to Amend Claim Five and Add a Defendant (Doc. # 55) be denied. Plaintiff filed timely objections on July 22, 2011. (Doc. # 66.) In light of these objections, the Court has conducted the requisite *de novo* review of the issues, the Recommendation, and Plaintiff's objections.

Pursuant to the Scheduling Order (Doc. # 37), the deadline for amendment of pleadings was May 16, 2011. Plaintiff did not file his Motion to Amend until June 24, 2011.¹ Thus, Plaintiff's Motion was untimely. The Federal Rules of Civil Procedure allow for modification of a Scheduling Order "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b). In his Recommendation, the Magistrate Judge found that Plaintiff had failed to demonstrate "good cause" for his failure to abide by the Scheduling Order. Based on its *de novo* review, the Court agrees with the Magistrate Judge that Plaintiff did not demonstrate "good cause" under Fed. R. Civ. P. 16(b) for seeking modification of the scheduling deadline, and Plaintiff fails to raise any new issues of law or fact in his Objection that would alter this conclusion. Accordingly, the Court ADOPTS the Recommendation of the Magistrate Judge (Doc. # 60) as the findings and conclusions of this Court and it is ORDERED that Plaintiff's Motion to Amend Claim and Add a Defendant (Doc. # 55) is DENIED.

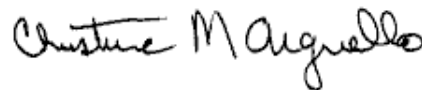
¹ In his Motion, Plaintiff sought leave to amend his "Claim Five" to include a claim of denial of access to the courts, and to add a defendant named "Filis" to the complaint.

Finally, the Magistrate Judge issued a Minute Order on June 2, 2011 (Doc. # 51), in which he ordered that Plaintiff's Motion to Be Provided a Copy of Plaintiff's Complaint (Doc. # 47) be denied. Plaintiff filed timely objections on June 16, 2011. (Doc. # 54.) Because Plaintiff's motion involves a nondispositive pretrial motion, Plaintiff must demonstrate that the Magistrate Judge's ruling was "clearly erroneous or . . . contrary to law." Fed. R. Civ. P. 72(a). "The clearly erroneous standard . . . requires that the reviewing court affirm unless it 'on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Having reviewed the objections, the Court finds that the Magistrate Judge's Minute Order (Doc. # 51) was not clearly erroneous or contrary to law. Accordingly, Plaintiff's objections (Doc. # 54) are OVERRULED and the Magistrate Judge's Order denying Plaintiff's Motion to Be Provided a Copy of Plaintiff's Complaint (Doc. # 47) is AFFIRMED.

DATED: September 08, 2011

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge