

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUN 30 2011

GREGORY C. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02727-BNB

JUSTIN RUEB, #94567, also known as
JUSTIN J. RUEB, and as
JUSTIN JOSEPH RUEB,

Plaintiff,

v.

ARISTEDES ZAVARAS,
EUGENE ATHERTON,
DENNIS BURBANK,
BRIAN BURNETT,
ANTHONY DECESARO,
JOHN DOE #1,
JOHN DOE #2,
JOHN DOE #3,
SUSAN JONES,
DONICE NEAL,
JOE ORTIZ,
LARRY REID,
WILLIAM RICHTER,
DAN SCHLESSINGER, and
JOHN SUTHERS,

Defendants.

ORDER OVERRULING OBJECTION

This matter is before the Court on the "Motion to Alter and Amend Judgement [sic]" (ECF No. 27) that Plaintiff, Justin Rueb, submitted to and filed with the Court *pro se* on June 17, 2011. Mr. Rueb, also known as Justin J. Rueb and Justin Joseph Rueb, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the correctional facility in Sterling, Colorado.

The Court must construe Mr. Rueb's filings liberally because he is a *pro se*

litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as a *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110.

No judgment has been entered in this case. Because Mr. Rueb objects to Magistrate Judge Boyd N. Boland's order to file an amended complaint (ECF No. 26) dated May 19, 2011, the Court will construe the motion to alter or amend judgment liberally as an objection filed pursuant to 28 U.S.C. § 636(b)(1)(A). For the reasons stated below, the objection will be overruled.

Pursuant to 28 U.S.C. § 636(b)(1)(A), a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

Mr. Rueb objects to the May 19 order to file an amended complaint on various grounds, including his mistaken belief that recent United States Supreme Court decisions have rendered Rule 8 of the Federal Rules of Civil Procedure unconstitutional. Mr. Rueb is the only remaining Plaintiff of the sixteen Plaintiffs listed on the original complaint in this action. In the original complaint, Plaintiffs complained that prison officials have conspired to punish Colorado State Penitentiary inmates in administrative segregation with excessively long disciplinary sentences to punitive segregation.

In a prior order (ECF No. 4), the Court dismissed without prejudice all Plaintiffs except Mr. Rueb. In the May 19 order, the Court gave Mr. Rueb the opportunity to file an amended complaint that asserted his own claims but not the claims of his former co-Plaintiffs, alleged the personal participation of each named Defendant in the asserted constitutional violations, and complied with Fed. R. Civ. P. 8. Magistrate Judge Boland's May 19 order is neither clearly erroneous nor contrary to law. Therefore, Mr.

Rueb's liberally construed objection will be overruled.

Accordingly, it is

ORDERED that the "Motion to Alter and Amend Judgement [sic]" (ECF No. 27) that Plaintiff, Justin Rueb, submitted to and filed with the Court *pro se* on June 17, 2011, is construed liberally as an objection filed pursuant to 28 U.S.C. § 636(b)(1)(A), and the objection is overruled. It is

FURTHER ORDERED that Mr. Rueb will be allowed **twenty (20) days from the date of this order** in which to file the amended complaint. It is

FURTHER ORDERED that, if Mr. Rueb fails to file an amended complaint as directed within the time allowed, the complaint and the action will be dismissed without further notice.

DATED at Denver, Colorado, this 30th day of June, 2011.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
Senior Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-02727-BNB

Justin Rueb
Prisoner No. 94567
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER** to the above named individuals on June 30, 2011.

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk