

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

Civil Action No. 11-cv-00578-REB-KLM

SCOTT MASON,

Plaintiff,

v.

STEVE HARTLEY, Warden, Fremont Correctional Facility,
MR. HUGHES, Commander, F.C.F. S.E.R.T.,
C/O FRANCIS, F.C.P. S.E.R.T., and
J. DOE, Health Services Administrator,

Defendants.

**ORDER ADOPTING RECOMMENDATIONS OF
THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) the defendants' **Motion To Dismiss Pursuant To FED. R. CIV. P. 12(b)(6)** [#20] filed June 6, 2011; (2) the **Recommendation of United States Magistrate Judge** [#31] filed July 14, 2011; (3) the plaintiff's **Motion for Substitution** [#41] filed September 23, 2011; and (4) the **Recommendation of United States Magistrate Judge** [#49] filed November 9, 2011. The plaintiff filed objections [#34 & #59] to the recommendations. I overrule the objections, approve and adopt the recommendations, grant the motion to dismiss in part, deny the motion to dismiss in part, and deny the motion for substitution.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendations to which objections have been filed. I have considered carefully the recommendations, objections, and applicable law.

Because plaintiff is proceeding *pro se*, I have construed his pleadings and other filings 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, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)). However, I have not acted as an advocate for the plaintiff.

The recommendations are detailed and well-reasoned. Contrastingly, the plaintiff's objections are imponderous and without merit.

The plaintiff is incarcerated in the Colorado Department of Corrections. His complaint concerns allegations that the defendants violated his Eighth Amendment right against cruel and unusual punishment. The magistrate judge recommends that the defendants' motion to dismiss be granted as to defendants, Steve Hartley and J. Doe, Health Services Administrator. The magistrate judge concludes correctly that the allegations in the complaint do not indicate that it might be possible for the plaintiff to show personal involvement of Steve Hartley or J. Doe in the violations alleged. On the other hand, the magistrate judge concludes correctly that the allegations in the complaint are sufficient to state claims against defendants, Mr. Hughes and C/O Francis. I agree. The plaintiff's arguments as stated in his objections [#34] do not undermine the analysis of the magistrate judge.

In the second recommendation [#49], the magistrate judge recommends that the court deny the plaintiff's motion for substitution. In that motion, the plaintiff seeks to substitute Rene Martinez as a defendant for the defendant currently designated as J. Doe, F.C.F., Health Services Administrator. Appropriately, the magistrate judge recommends that this motion be denied because, for the reasons stated in the earlier recommendation [#31], the allegations in the plaintiff's complaint are not sufficient to state a claim on which relief can be granted against J.Doe, F.C.F., Health Services Administrator. The plaintiff's arguments as stated in his objections [#59] do not undermine the analysis of the magistrate judge.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#31] filed July 14,

2011, is **APPROVED** and **ADOPTED** as an order of this court;

2. That the defendants' **Motion To Dismiss Pursuant To FED. R. CIV. P. 12(b)(6)** [#20] filed June 6, 2011, is **GRANTED** in part;

3. That under FED. R. CIV. P. 12(b)(6), the plaintiff's claims against defendants Steve Hartley and J. Doe, Health Services Administrator, are **DISMISSED** with prejudice;

4. That defendants Steve Hartley and J. Doe, Health Services Administrator, are **DROPPED** from this action, and the caption shall be **AMENDED** accordingly;

5. That otherwise, the defendants' **Motion To Dismiss Pursuant To FED. R. CIV. P. 12(b)(6)** [#20] filed June 6, 2011, is **DENIED**;

6. That the **Recommendation of United States Magistrate Judge** [#49] filed November 9, 2011, is **APPROVED** and **ADOPTED** as an order of this court;

7. That the plaintiff's **Motion for Substitution** [#41] filed September 23, 2011, is **DENIED**.

Dated February 28, 2012, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge