

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

Civil Case No. 11-cv-02421-REB-MJW

ALEMAYEHU GETACHEW,

Plaintiff,

v.

7-ELEVEN, INC.,

Defendant.

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**ORDER RE: RECOMMENDATIONS OF  
THE UNITED STATES MAGISTRATE JUDGE**

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**Blackburn, J.**

The matters before me are the recommendations contained in the magistrate judge's **Order on Plaintiff's Motions Amending His Complaint (Docket Nos. 40 and 41) and Recommendations on Defendant 7-Eleven, Inc.'s Motion To Dismiss (Docket No. 10) and Plaintiff's Motion for Judgment Against Defendant 7-Eleven (Docket No. 23)** [#52]<sup>1</sup> filed April 27, 2012. I adopt the recommendation regarding plaintiff's motion for judgment against defendant, but respectfully reject the recommendation to deny defendant's motion to dismiss as moot in light of more recent developments in the case.

Plaintiff is proceeding *pro se*. Accordingly, and appropriately, the magistrate judge construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers, as have I. **See *Erickson v. Pardus*, 551 U.S.**

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<sup>1</sup> "[#52]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); **Andrews v. Heaton**, 483 F.3d 1070, 1076 (10<sup>th</sup> Cir. 2007); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10<sup>th</sup> 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, a litigant's *pro se* status does not excuse him from complying in all particulars with the Federal Rules of Civil Procedure, the Local Rules of this District, and of course, all duly issued orders of the court. **Nielsen v. Price**, 17 F.3d 1276, 1277 (10<sup>th</sup> Cir. 1994); **Carrillo v. Castle, Stawiarki, LLC**, 2012 WL 12809 at\*2 (D. Colo. Jan. 4, 2012). Nevertheless, and despite plaintiff's *pro se* status, where no objections have been filed to the recommendation, as here, I review it only for plain error. **See Morales-Fernandez v. Immigration & Naturalization Service**, 418 F.3d 1116, 1122 (10<sup>th</sup> Cir. 2005).

The magistrate judge recommends that **Defendant 7-Eleven, Inc.'s Motion To Dismiss and Memorandum in Support** [#10] filed October 18, 2011, be denied as moot in light of his contemporaneous order granting plaintiff's motions to amend his complaint to add parties and a request for a jury trial. Plaintiff was ordered to file his amended complaint on or before May 11, 2012. When no such amended pleading was filed by the deadline, the magistrate judge issued an **Order To Show Cause** [#54] filed May 22, 2012, directing plaintiff to show why the case should not be dismissed for failure to comply with the court's directive. Plaintiff filed an untimely response to the show cause order, indicating that "[a]t this time [he] is not interested to amend." (**Plaintiff's Answer to "Order To Show" Filed on May 22, 2012** [#55], filed June 4,

2012.)<sup>2</sup>

Given plaintiff's obvious change of heart concerning his desire to amend his complaint, the reasons underlying the magistrate judge's recommendation to deny defendant's motion to dismiss without prejudice have evanesced. I therefore will reject that recommendation and re-refer the motion to the magistrate judge for further recommendation. However, finding no plain error in the magistrate judge's recommended disposition of plaintiff's motion for judgment, I find and conclude that the recommendation as to that motion should be approved and adopted.

**THEREFORE, IT IS ORDERED** as follows:

1. That the recommendations contained in the magistrate judge's **Order on Plaintiff's Motions Amending His Complaint (Docket Nos. 40 and 41) and Recommendations on Defendant 7-Eleven, Inc.'s Motion To Dismiss (Docket No. 10) and Plaintiff's Motion for Judgment Against Defendant 7-Eleven (Docket No. 23) [#52]** filed April 27, 2012, are **REJECTED IN PART** and **APPROVED AND**

**ADOPTED IN PART** as follows:

- a. That the recommendation to deny **Defendant 7-Eleven, Inc.'s Motion To Dismiss and Memorandum in Support** [#10], filed October 18, 2011, is respectfully **REJECTED**; and
- b. that the recommendation to deny **Plaintiff's Motion for Judgment Against Defendant 7-Eleven Inc. On Plaintiff's Pleading Filed on**

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<sup>2</sup> The magistrate judge has not yet had opportunity to resolve the issues implicated by the plaintiff's answer to the show cause order.


**September 14, 2011** [#23], filed November 14, 2011, is **APPROVED AND ADOPTED** as an order of this court;

2. That **Plaintiff's Motion for Judgment Against Defendant 7-Eleven Inc. On Plaintiff's Pleading Filed on September 14, 2011** [#23], filed November 14, 2011, is **DENIED**; and

3. That **Defendant 7-Eleven, Inc.'s Motion To Dismiss and Memorandum in Support** [#10], filed October 18, 2011, is **RE-REFERRED** to the magistrate judge for further recommendation.

Dated June 8, 2012, at Denver, Colorado.

**BY THE COURT:**



Robert E. Blackburn  
United States District Judge