

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

Civil Action No. 11-cv-02712-REB-KMT

LEROY DAMASIO FRESQUEZ,

Plaintiff,

v.

SHERIFF TED MINKS,
MICHAEL FISH, Detention Service Manager,
JOHN DOE (CAPTAIN), March 5, 2010,
LT. MARTINALLI,
LT. G. GITTIN,
LT. J. LUCAS,
ADMINISTRATIVE SGT. RENFRO,
SGT. TROY BETKA,
SGT. SCOTT HAPP,
SGT. STEVEN WYGANT,
OFFICER KATHRINE FEROE,
DEPUTY SHERIFF CRUMBAKER,
DEPUTY SHERIFF RYAN VIERS,
DEPUTY SHERIFF DUSTIN DYELING,
DEPUTY SHERIFF ANTHONY KOTRIS,
DEPUTY SHERIFF DONALD SPRINGFIELD,
DEPUTY SHERIFF HOLLEY,
DEPUTY SHERIFF JAMES GELEUDE,
DEPUTY SHERIFF JASON RICHARDSON,
DEPUTY SHERIFF REID PERRY,
DEPUTY SHERIFF WILLIAM BOHM,
DEPUTY SHERIFF ERIK BOUGHAM,
DEPUTY SHERIFF HERBERT LONGSHORE,
DEPUTY SHERIFF #1958 (Name Unknown),
COUNSELOR MIKE COLLINS,
COUNSELOR SUPERVISOR DEBRA ELUDO,
CORRECTIONAL HEALTHCARE MANAGEMENT,
CLAUDIA VAN BUREN/HSA,
RAYMOND HERR, Responsible Physician,
TRACY HAINES, LPN, and
KATHERINE BECERRA, RN,

Defendants.

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

Blackburn, J.

This matter is before me on the following: (1) **Jefferson County Sheriff Defendants' Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6)** [#54]¹ filed May 10, 2012; (2) **CHM Defendants' Combined Motion and Brief to Dismiss Second Amended Prisoner's Complaint** [#80] filed June 15, 2012; (3) plaintiff's **Motion for Leave to Amend – Second Amended Prisoners [sic] Complaint** [#85] filed June 21, 2012; and (4) the corresponding **Recommendation of United States Magistrate Judge** [#130] filed February 6, 2013. The plaintiff filed objections [#132] to the recommendation. I overrule the objections, approve and adopt the recommendation, grant the motions to dismiss, and deny the motion to amend.

The plaintiff is acting *pro se*. Therefore, I construe his filings generously and with the leniency due pro se litigants, see *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007); *Hall v. Belmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)).

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

The plaintiff, Leroy Damasio Frewquez, is an inmate in the Colorado Department of Corrections. The allegations in his complaint concern incidents he claims took place

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

when he was incarcerated in the Jefferson County Jail. In the recommendation [#54], the magistrate judge analyzes thoroughly the allegations in the plaintiff's operative complaint [#17] and applies correctly the standards applicable to motions to dismiss. Concurrently, the magistrate judge analyzes in detail the allegations in the plaintiff's proposed third amended complaint. Based on this analysis, the magistrate judge recommends that the plaintiff's motion to amend his complaint be denied. I have reviewed the plaintiff's many objections to the recommendation. The plaintiff's objections do not show that the recommendation of the magistrate judge is incorrect factually or legally. I conclude that the analysis, conclusions, and recommendations of the magistrate judge are correct and that the plaintiff's objections must be overruled.

By granting the two motions to dismiss, I resolve all claims against all named defendants in this case, except for two defendants who are named as "John Doe" or "Unknown." Nothing in the record indicates that the plaintiff has identified these defendants or served them with a summons and complaint. For the same reasons the allegations in the plaintiff's complaint are not sufficient to state a claim against the named defendants, those allegations are not sufficient to state a claim against the unnamed defendants. Under 28 U.S.C. § 1915(e)(2)(B), I dismiss the claims against the unnamed defendants for failure to state a claim on which relief can be granted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#130] filed February 6, 2013, is **APPROVED** and **ADOPTED** as an order of this court;
2. That the objections to the recommendation stated in plaintiff's paper [#132] are overruled;

3. That the **Jefferson County Sheriff Defendants' Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6)** [#54] filed May 10, 2012, is **GRANTED**;

4. That the **CHM Defendants' Combined Motion and Brief to Dismiss Second Amended Prisoner's Complaint** [#80] filed June 15, 2012, is **GRANTED**;

5. That under 28 U.S.C. § 1915(e)(2)(B), I dismiss the claims against the unnamed defendants for failure to state a claim on which relief can be granted;

6. That under FED. R. CIV. P. 12(b)(6), all claims against all defendants, as alleged in the plaintiff's **Second Amended Prisoner's Complaint** [#17], are **DISMISSED**;

7. That the plaintiff's **Motion for Leave to Amend – Second Amended Prisoners [sic] Complaint** [#85] filed June 21, 2012, is **DENIED**;


8. That under 28 U.S.C. § 1915(a)(3), I certify that any appeal from the recommendation [#130] and this order would not be taken in good faith and, therefore, any appeal from the recommendation and this order may not be taken *in forma pauperis*;

9. That **JUDGMENT SHALL ENTER** in favor of each of the defendants against the plaintiff, Leroy Damasio Fresquez;

10. That the defendants are **AWARDED** their costs to be taxed by the clerk of the court pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated March 19, 2013, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge