

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

Civil Action No. 12-cv-00333-REB-KMT

HENRY LEON MADISON,

Plaintiff,

v.

VOLUNTEERS OF AMERICA,  
SUNSET PARK APARTMENTS,  
DIANN KUNZ,  
ROYA ROSADO, and  
LINDA FULKA,

Defendant.

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**ORDER OVERRULING OBJECTIONS TO AND ADOPTING  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

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**Blackburn, J.**

The matters before me are (1) the **Recommendation of United States Magistrate Judge** [#50]<sup>1</sup> filed February 5, 2013; and (2) the objections contained within **Plaintiff Madison's Response to Recommendations** [*sic*] **of the Magistrate** [#57] filed March 15, 2013. I overrule plaintiff's objections, approve and adopt the recommendation, deny defendant Volunteers of America's motion to dismiss, and grant the other defendants' motion to dismiss.

Because plaintiff was proceeding *pro se* at the time he responded to defendants' motion to dismiss, I have construed his pleadings more liberally and held them to a less

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<sup>1</sup> "[#50]" 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.

stringent standard than formal pleadings or papers 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 (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)).

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed. I have considered carefully the recommendation, objections, and applicable caselaw. The recommendation is detailed and well-reasoned. Contrastingly, plaintiff's objections are imponderous and without merit. Plaintiff's objections deal with issues that were not presented by the motions to dismiss, and, in fact, deal with claims previously dismissed before the case was even drawn to a district judge. (**See Order To Dismiss in Part and To Draw Case to a District Judge and a Magistrate Judge** [#7], filed April 5, 2012.)

Nor will I entertain plaintiff's request that the court dismiss these claims without prejudice in case he later discovers that some or all of these defendants breached the settlement agreement that operates as *res judicata* in this action by allegedly failing to dismiss the eviction action. The time to prove up those arguments was now, in the context of this case, not at some later date when plaintiff may be able to substantiate his inchoate suspicions.

Therefore, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

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

1. That the **Recommendation of United States Magistrate Judge** [#50] filed February 5, 2013, is **APPROVED** and **ADOPTED** as an order of this court;

2. That the objections stated in **Plaintiff Madison's Response to Recommendations** [*sic*] **of the Magistrate** [#57] filed March 15, 2013, are **OVERRULED**;

3. That the **Defendants' Sunset Park Apartments, Dianna Kunz, Roya Rosado, and Linda Fulks Motion To Dismiss Pursuant to FRCO 12(b)(6)** [#24] filed May 18, 2012, is **GRANTED**;

4. That **Defendant Volunteers of America, Inc.'s Motion To Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)** [#27] filed June 5, 2012, is **DENIED**;

5. That at the time judgment enters, judgment **SHALL ENTER** on behalf of defendants, Sunset Park Apartments, Dianna Kunz, Roya Rosado, and Linda Fulks, against plaintiff, Henry Leon Madison, as to all claims for relief and causes of action asserted against them in this action; provided, that the judgment as to these claims shall be with prejudice;

6. That defendants, Sunset Park Apartments, Dianna Kunz, Roya Rosado, and Linda Fulks, are **DISMISSED** as named parties to this action, and the case caption is **AMENDED** accordingly;

7. That defendants, Sunset Park Apartments, Dianna Kunz, Roya Rosado, and Linda Fulks 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; and

8. That under 28 U.S.C. § 1915(a)(3), I certify that any appeal from the recommendation [#50] 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*.

Dated March 21, 2013, at Denver, Colorado.

**BY THE COURT:**



Robert E. Blackburn  
United States District Judge