

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

Civil Action No. 12-cv-00878-REB-KLM

DOUGLAS JAMES ALWARD,

Plaintiff,

v.

KEVIN MILYARD,
RAYMOND HIGGINS,
CHRISTOPHER FLECKENSTEIN,
CHRISTOPHER GASSAWAY,
PATRICK WHITE,
JOHN WALRAVEN,
JEFFERY ERPS, and
JOHN CHAPDELAIN,

Defendants.

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

Blackburn, J.

This matter is before me on the following: (1) the defendants' **Motion To Dismiss** [#14]¹ filed June 11, 2012; and (2) the corresponding **Recommendation of United States Magistrate Judge** [#25] filed October 1, 2012. No objections to the recommendation have been filed.

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, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th

¹ “[#14]” 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.

Cir. 2007); **Hall v. Belmon**, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing **Haines v. Kerner**, 404 U.S. 519, 520-21 (1972)).

No objections to the recommendation were filed. Thus, I review it only for plain error. **See Morales-Fernandez v. Immigration & Naturalization Service**, 418 F.3d 1116, 1122 (10th Cir. 2005).² Finding no error, much less plain error, in the disposition recommended by the magistrate judge, I find and conclude that the recommendation should be approved and adopted as an order of this court.

The plaintiff's complaint concerns an alleged strip search of the plaintiff. The plaintiff alleges that the strip search violated his rights under the Fourth and Eighth Amendments. The magistrate judge concluded correctly that the allegations in the plaintiff's complaint do not state a Fourth Amendment claim against defendants Christopher Gassaway, Patrick White, and John Chapdelain. Defendant John Chapdelain is not named as a defendant in the plaintiff's Eight Amendment claim. Therefore, John Chapdelain is dropped as a defendant in this case. Otherwise, the magistrate judge concluded correctly that the allegations in the plaintiff's complaint are sufficient to state claims under the Fourth and Eighth Amendments.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#25] filed October 1, 2012, is **APPROVED AND ADOPTED** as an order of this court;
2. That the defendants' **Motion To Dismiss** [#14] filed June 11, 2012, is **GRANTED** as to the plaintiff's Fourth Amendment claim against defendants Christopher Gassaway, Patrick White, and John Chapdelain;

² This standard pertains even though plaintiff is proceeding *pro se* in this matter. **Morales-Fernandez**, 418 F.3d at 1122.

3. That the plaintiff's Fourth Amendment claim against defendants Christopher Gassaway, Patrick White, and John Chapdelain is **DISMISSED** without prejudice;

4. That defendant John Chapdelain is **DROPPED** as a defendant in this case, and the caption shall be **AMENDED** accordingly;

5. That otherwise, the defendants' **Motion To Dismiss** [#14] filed June 11, 2012, is **DENIED**.

Dated March 12, 2013, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge