

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

Civil Action No. 12-cv-02764-REB-KLM

JAMES FAIRCLOTH,

Plaintiff,

v.

CELIA SCHWARTZ, legal Assistant for BVCF, in her official and individual capacities, and

GERRY BLAND, Hearings Officer for BVMC/BVCF, in his official and individual capacities,

Defendants.

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

Blackburn, J.

This matter is before me on the following: (1) the **Defendants' Motion To Dismiss Amended Complaint (Doc. 107)** [#115]¹ filed November 20, 2013; and (2) the **Recommendation of United States Magistrate Judge** [#131] filed July 24, 2014. The plaintiff and the defendants both filed objections [#132 & #139] to the recommendation.

The plaintiff is proceeding *pro se*. Thus, 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 (2007); **Andrews v. Heaton**, 483 F.3d 1070, 1076 (10th Cir. 2007); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991).

¹ “[#115]” 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.

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

As detailed in the recommendation [#131], the plaintiff, James Faircloth, asserts claims under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12102 - 12213, and the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States. Mr. Faircloth, a prison inmate, alleges that the defendants, employees at the Buena Vista Correctional Facility, took certain actions in violation of his rights. The magistrate judge recommends that the motion to dismiss be granted as to all claims asserted by Mr. Faircloth, except for his First Amendment access to the courts and retaliation claims as asserted against defendant, Celia Schwartz. The magistrate judge recommends that the motion be denied as to these two claims to the extent they are asserted against Ms. Schwartz in her individual capacity for monetary damages, injunctive relief, and declaratory relief, and against her in her official capacity for injunctive relief. The recommendation is detailed, well reasoned, and correct. Therefore, I overrule the objections and approve and adopt the recommendation.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#131] filed July 24, 2014, is **APPROVED** and **ADOPTED** as an order of this court;
2. That the objections [#132 & #139] of the parties are **OVERRULED**;
3. That the **Defendants' Motion To Dismiss Amended Complaint (Doc. 107)** [#115] filed November 20, 2013, is **DENIED** as to the First Amendment claim of the plaintiff alleging denial of access to the courts and the First Amendment claim of the

plaintiff alleging retaliation as alleged against defendant, Celia Schwartz in her individual capacity, to the extent the plaintiff seeks monetary damages, injunctive relief, and declaratory relief, and as alleged against defendant, Celia Schwartz in her official capacity, to the extent the plaintiff seeks injunctive relief;

4. That otherwise, the **Defendants' Motion To Dismiss Amended Complaint** (**Doc. 107**) [#115] filed November 20, 2013, is **GRANTED**;
5. That consistent with the recommendation [#131], the following claims are **DISMISSED WITH PREJUDICE**:
 - (a) the claim of the plaintiff under the ADA for monetary relief against the defendants in their individual capacities;
 - (b) the claims of the plaintiff against the defendants in their official capacities seeking declaratory relief;
 - (c) the claims of the plaintiff for monetary damages based on alleged violations of the Constitution of the State of Colorado; and
 - (d) the claims of the plaintiff alleging violations of the administrative regulations of the Colorado Department of Corrections;
6. That excluding the claims listed in paragraphs three (3) and five (5), above, all other claims of the plaintiff are **DISMISSED WITHOUT PREJUDICE**; and
7. That defendant, Gerry Bland, is **DROPPED** as a party to this action, and the caption of this case shall be **AMENDED** accordingly.

Dated September 10, 2014, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge