

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

Civil Action No. 13-cv-00831-REB-KLM

DELAREE ROSS, a/k/a Delise Ross,

Plaintiff,

v.

DAVID GALLEGOS, Aurora P.O.,

Defendant.

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

Blackburn, J.

The matter before me is the **Recommendation of United States Magistrate Judge** [#25],¹ filed November 14, 2013. No objection having been filed to the recommendation, 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 such error in the magistrate judge's recommended disposition, I find and conclude that the recommendation should be approved and adopted in relevant, substantive part.

¹ “[#35]” 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.

² This standard pertains even though plaintiff is proceeding *pro se* in this matter. *Morales-Fernandez*, 418 F.3d at 1122. In addition, because plaintiff is proceeding *pro se*, I have construed her pleadings 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, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)).

The recommendation is detailed and well-reasoned. Moreover, plaintiff has conceded that the case should be dismissed. (**See Letter** [#26], filed November 20, 2013.) Indeed, plaintiff concedes that she has sued the wrong defendant and agrees that the case should be dismissed. (**See id.**) In light of these representations and admissions, I agree with the magistrate judge that the case should be dismissed, but find and conclude (contrary to the recommendation) that the claims against defendant should be dismissed with prejudice. (**See Recommendation** at 8 n.5 [#25], filed November 14, 2013 (recommending that dismissal be without prejudice because plaintiff is proceeding *pro se*, but noting that dismissal for failure to state a claim pursuant to Rule 12(b)(6) should be with prejudice “where a plaintiff is unable to allege any fact sufficient to support its claim”) (citation omitted).)

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, except that plaintiff’s claims should be dismissed with prejudice.

THEREFORE, IT IS ORDERED as follows:

1. That **Recommendation of United States Magistrate Judge** [#25], filed November 14, 2013, is **APPROVED** and **ADOPTED** as an order of this court in relevant part as follows;

a. That the recommendation is **APPROVED** and **ADOPTED** on the substantive grounds suggested for its recommendation that defendant’s motion to dismiss be granted; and

b. That the recommendation is, respectfully, **REJECTED** to the extent it recommends that plaintiff's claims be dismissed without prejudice, based on plaintiff's more recent concession that she has sued the wrong defendant;

2. That **Defendant's Motion To Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)** [#20], filed is August 21, 2013, is **GRANTED**;

3. That plaintiff's claims against defendant are **DISMISSED WITH PREJUDICE**;

4. That judgment **SHALL ENTER** on behalf of defendant, David Gallegos, Aurora P.O., against plaintiff, Delaree Ross, a/k/a Delise Ross, on all claims for relief and causes of action; and

5. That defendant is **AWARDED** his 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 December 3, 2013, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge