

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

Civil Action No. 13-cv-01146-REB-KMT

JONATHAN WOODSTOCK,

Plaintiff,

v.

KATHLEEN BOYD,
MS. SPANOZI,
MR. HODGE,
MS. MARTIN,
SHARRON PHILLIPS,
PAUL LARSON, and
CAROL BROWN,

Defendants.

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

Blackburn, J.

This matter is before me on the following:(1) **Defendant Betty Spinuzzi's¹ Motion to Dismiss Plaintiff's Complaint** [#23]² filed Aug. 9, 2013; (2) the **Motion To Dismiss Plaintiff's Amended Complaint** [#28] filed by defendants Boyd, Hodge, Phillips, Larson, and Brown on September 9, 2013; (3) the **Recommendation of United States Magistrate Judge** [#43] filed February 6, 2014; and (4) the

¹ In his complaint [#15], the plaintiff refers to this defendant as "Ms. Spanozi." In the motion to dismiss [#23], this defendant clarifies that her surname is correctly spelled "Spinuzzi." The court uses the correct spelling in this order.

² "[#23]" 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.

Recommendation of United States Magistrate Judge [#49] filed February 25, 2014. I approve and adopt both recommendations, grant the motions to dismiss, and dismiss this case.

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).

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

The complaint [#15] of the plaintiff concerns the medical care provided to the plaintiff while he was incarcerated in the Colorado Department of Corrections. In each of his four claims for relief, the plaintiff, Jonathan Woodstock, alleges that the defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by exhibiting deliberate indifference to his serious medical needs. Based on the thorough analysis stated in the recommendation [#49], the magistrate judge recommends that the claims against defendants Boyd, Spinuzzi, Hodge, Phillips, Larson, and Brown be dismissed for failure to state a claim on which relief can be granted. After *de novo* review, I concur.

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

In a separate recommendation [#43], the magistrate judge notes the failure of Mr. Woodstock to respond to an Order to Show Cause [#41] regarding the failure of Mr. Woodstock to serve the defendant named as “Ms. Martin” in a timely fashion. As noted by the magistrate judge, under FED. R. CIV. P. 4(m), the court must dismiss the claims against Ms. Martin without prejudice based on the failure of Mr. Woodstock to timely serve this defendant and to timely respond to the Order to Show Cause [#41]. Again, after *de novo* review, I concur..

Therefore, I approve and adopt the recommendations of the magistrate judge. I grant both motions to dismiss. I dismiss the claims against Ms. Martin under FED. R. CIV. P. 4(m).

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#43] filed February 6, 2014, is **APPROVED** and **ADOPTED** as an order of this court;
2. That the **Recommendation of United States Magistrate Judge** [#49] filed February 25, 2014, is **APPROVED** and **ADOPTED** as an order of this court;
3. That under FED. R. CIV. P. 12(b)(6), **Defendant Betty Spinuzzi’s Motion to Dismiss Plaintiff’s Complaint** [#23] filed Aug. 9, 2013, is **GRANTED**;
4. That under FED. R. CIV. P. 12(b)(1) and (b)(6), the **Motion To Dismiss Plaintiff’s Amended Complaint** [#28] filed by defendants Boyd, Hodge, Phillips, Larson, and Brown on September 9, 2013, is **GRANTED**;
5. That under FED. R. CIV. P. 12(b)(6), the claims against Kathleen Boyd, Ms. Spinuzzi (named in the complaint as Ms. Spanozi), Mr. Hodge, Sharron Phillips, Paul Larson, and Carol Brown, are **DISMISSED** with prejudice;
6. That under FED. R. CIV. P. 4(m), the claims against the defendant named as


“Ms. Martin,” are **DISMISSED** without prejudice;

7. That under FED. R. CIV. P. 58, judgment **SHALL ENTER** in favor of the defendants, Kathleen Boyd, Ms. Spinuzzi (named in the complaint as Ms. Spanozi), Mr. Hodge, Ms. Martin, Sharron Phillips, Paul Larson, and Carol Brown, against the plaintiff, Jonathan Woodstock; and

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

Dated March 17, 2014, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge