

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

Civil Action No. 13-cv-02411-REB-CBS

KIRBY MARTENSEN,

Plaintiff,

v.

WILLIAM KOCH, and
DOES 6-25,

Defendants.

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

Blackburn, J.

The matter before me is the magistrate judge's **Recommendation Regarding Defendant's Motion To Dismiss** [#151],¹ filed June 12, 2014. No timely 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).

Finding no such error in the magistrate judge's recommended disposition, I find and conclude that the recommendation should be approved and adopted. Although typically a motion to dismiss for failure to state a claim is without prejudice, I concur with the magistrate judge that amendment as to the claims implicated by the motion to dismiss would be futile, making dismissal with prejudice appropriate. *See Brereton v.*

¹ "[#151]" 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.

Bountiful City Corp., 434 F.3d 1213, 1219 (10th Cir. 2006).

THEREFORE, IT IS ORDERED as follows:

1. That the magistrate judge's **Recommendation Regarding Defendant's Motion To Dismiss** [#151], filed June 12, 2014, is **APPROVED** and **ADOPTED** as an order of this court;

2. That **Defendant William I. Koch's Motion To Dismiss Revised Fourth Amended Complaint and To Strike Portions of Revised Fourth Amended Complaint (Dkt. 111, filed 4/1/14)** [#116], filed is April 11, 2013, is **GRANTED IN PART** and **DENIED AS MOOT IN PART** as follows:

a. That the motion is **GRANTED** to the extent it seeks to dismiss plaintiff's claims for civil conspiracy and intentional infliction of emotional distress; and

b. That the motion is **DENIED AS MOOT** to the extent it seeks to strike portions of the Fourth Amended Complaint;

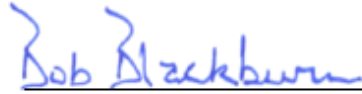
3. That the Second Cause of Action (Civil Conspiracy) and Third Cause of Action (Intentional Infliction of Emotional Distress) asserted in **Plaintiff's Revised Fourth Amended Complaint for Damages** [#111], filed April 1, 2014, are **DISMISSED WITH PREJUDICE**; and

4. That at the time judgment enters, judgment with prejudice **SHALL ENTER** on behalf of defendants, William Koch and Does 6-25, against plaintiff, Kirby Martensen, on the Second Cause of Action (Civil Conspiracy) and Third Cause of Action (Intentional Infliction of Emotional Distress) asserted in **Plaintiff's Revised Fourth Amended**

Complaint for Damages [#111], filed April 1, 2014.

Dated July 7, 2014, at Denver, Colorado.

BY THE COURT:

A handwritten signature in blue ink, reading "Bob Blackburn", is written over a horizontal line.

Robert E. Blackburn
United States District Judge