

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

Civil Action No. 13-cv-02570-REB-BNB

COLLEGE PHARMACY, INCORPORATED EMPLOYEE STOCK OWNERSHIP PLAN,
John Stinar, Trustee, and
COLLEGE PHARMACY, INC., a Colorado corporation,

Plaintiffs,

v.

MARK LARIVÉE, individually, and
PRAIRIE CAPITAL ADVISORS, INC., an Illinois corporation,

Defendant.

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

Blackburn, J.

This matter is before me on the following:(1) defendant Mark Larivee's **Motion to Dismiss Pursuant to Rule 12(b)(6) or in the Alternative Require Plaintiff to Comply with Heightened Pleading Requirements Pursuant to Federal Rule 9(b) and a Request for Attorney Fees** [#23]¹ filed November 21, 2013; and (2) the **Recommendation of United States Magistrate Judge** [#49] filed July 18, 2014.

Because no objection to the recommendation was filed, I review the recommendation only for plain error. **See *Morales-Fernandez v. Immigration & Naturalization***

Service, 418 F.3d 1116, 1122 (10th Cir. 2005). Finding no error, much less plain error,

¹ “[#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.

in the recommendation of the magistrate judge, I find and conclude that the recommendation should be approved and adopted as an order of this court.

In the motion to dismiss [#23], defendant Mark Larivee argues that the allegations in the complaint are not sufficient to state a claim on which relief can be granted. Alternatively, he argues that the heightened pleading standard of FED. R. CIV. P. 9 are applicable to the complaint of the plaintiffs. For the reasons stated by the magistrate judge, I find and conclude that the allegations of the complaint are sufficient to state a plausible claim for relief against Mr. Larivee. In addition, I find and conclude that the pleading standards of FED. R. CIV. P. 9 are not applicable to the claim asserted against Mr. Larivee.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#49] filed July 18, 2014, is **APPROVED** and **ADOPTED** as an order of this court; and

2. That defendant Mark Larivee's **Motion to Dismiss Pursuant to Rule 12(b)(6) or in the Alternative Require Plaintiff to Comply with Heightened Pleading Requirements Pursuant to Federal Rule 9(b) and a Request for Attorney Fees** [#23] filed November 21, 2013, is **DENIED**.

Dated August 7, 2014, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge