

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

Civil Action No. 14-cv-00872-REB-KLM

DAVID R. FISCHER, an individual,

Plaintiff,

v.

JACOB J. LEW, Secretary of the Department of the Treasury, in his official capacity,

Defendant.

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

Blackburn, J.

The matter before me is the **Recommendation of United States Magistrate Judge** [#19],¹ filed November 3, 2014. No objections to the recommendation have been filed. Therefore, 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 error in the analysis and recommended disposition of the magistrate judge, I find and conclude that recommendation should be approved and adopted and that this case should be dismissed for failure to prosecute.

¹ “[#19]” 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.

² This standard pertains even though the plaintiff is proceeding *pro se* in this matter. *Morales-Fernandez*, 418 F.3d at 1122. In addition, because the plaintiff is proceeding *pro se*, I have construed his 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 magistrate judge recommends that this lawsuit be dismissed with prejudice as a sanction for the failure of the plaintiff to comply with the duly issued orders of the court and failure to prosecute this action. The magistrate judge thoroughly considered all of the relevant factors which must be considered under the standards established in ***Ehrenhaus v. Reynolds***, 965 F.2d 916, 921 (10th Cir. 1992) and related cases.

Although dismissal with prejudice is an extreme sanction, the circumstances chronicled in the recommendation indisputably demonstrate a “clear record of delay [and] contumacious conduct” warranting the imposition of such a sanction. ***Meade v. Grubbs***, 841 F.2d 1512, 1520 n.6 (10th Cir. 1988).

The plaintiff has demonstrated a clear pattern of unjustified failure to participate appropriately in the conduct of this litigation or to respond to the duly issued orders of the court. Given that pattern, I concur with the magistrate judge that dismissal with prejudice is appropriate. The course of events chronicled by the magistrate judge indicates to the court that the plaintiff is unwilling to conform to the rules of conduct and procedure that govern the prosecution of claims in this court.

THEREFORE, IT IS ORDERED as follows:

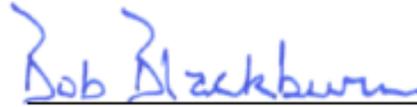
1. That the **Recommendation of United States Magistrate Judge** [#19], filed November 3, 2014, is approved and adopted as an order of this court;
2. That the complaint [#1] of the plaintiff is dismissed with prejudice as a sanction for failure to comply with the duly issued orders of the court and failure to prosecute;
3. That judgment with prejudice shall enter in favor of the defendant, Jacob J. Lew, Secretary of the Department of the Treasury, and against the plaintiff, David R. Fischer, on all claims for relief and causes of action asserted in the complaint;

4. That the defendant is awarded his costs to be taxed by the clerk of the court in the time and manner prescribed by Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1; and

5. That this case is closed.

Dated January 28, 2016, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge