

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 14-cv-00916-RBJ -KMT

DAVID K. JENNER,

Plaintiff,

v.

CAPTAIN DON BRIGHTWELL,
ASSISTANT ATT. GENERAL JACQUELYNN N. RICH FREDERICKS,
JOHN/JANE DOE #1 (Limon Correctional Facility Staff),
JOHN/JANE DOE #2 (Limon Correctional Facility Staff), and
JOHN/JANE DOE #3 (C.D.O.C. Offender Services),

Defendants.

ORDER

This matter is before the Court on the February 3, 2015 Recommendation [ECF No. 27] of Magistrate Judge Kathleen M. Tafoya that the Court grant Defendants' Motion to Dismiss Amended Prisoner Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) [ECF No. 17] but grant leave to the plaintiff to amend his complaint in a manner consistent with her recommendation. The Recommendation is incorporated herein by reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. No objection was filed by either party. "In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that

Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.")).

The Court has reviewed the relevant filings surrounding the Recommendation, in particular the Amended Complaint, the pending motion, and the briefs on the motion. Based on this review, the Court concludes that Judge Tafoya's analyses and recommendations are correct, and that "there is no clear error on the face of the record." Fed. R. Civ. P. 72 advisory committee's note. Therefore, the Court ADOPTS the Recommendation as the findings and conclusions of this Court.

Per Judge Tafoya's recommendation, the Court grants Mr. Jenner leave to amend his complaint in a manner consistent with her opinion, if he so chooses. Mr. Jenner is granted leave to amend until April 15, 2015. Because Mr. Jenner has no access to the electronic filing system used by this Court, his Amended Complaint must be dated and submitted to prison officials for mailing by April 15, 2015. If Mr. Jenner chooses not to file a second amended complaint, the defendants may move the Court for an entry of judgment at that time.

Mr. Jenner recently filed a motion to set a status conference in this case [ECF No. 28]. In light of the recommendation and this Court's ruling, the motion is premature. If Mr. Jenner files a second amended complaint that either survives a motion to dismiss or to which the defendants file an answer in lieu of a motion to dismiss, a scheduling conference will be set.

Accordingly, it is ORDERED that the Recommendation of United States Magistrate Judge [ECF No. 27] is AFFIRMED and ADOPTED. Defendants' Motion to Dismiss Amended Prisoner Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) [ECF No. 17] is GRANTED WITHOUT PREJUDICE. Consistent with this opinion, judgment SHALL NOT enter at this time. Finally, Plaintiff's Motion to Set Status Conference [ECF No. 28] is DENIED as premature.

DATED this 6th day of March, 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Brooke Jackson", written in a cursive style.

R. Brooke Jackson
United States District Judge