

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 14-cv-03291-WYD-MEH

WYATT T. HANDY, JR.,

Plaintiff,

v.

PATRICIA GUERRERO-DIAZ,
KELLY LEHMAN, and
S. BROWN,

Defendants.

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

THIS MATTER is before the Court on Plaintiff's Motion for Leave to File an Amended Complaint filed on October 22, 2015, wherein Plaintiff sought to file what he characterized as his Fourth Amended Complaint. This motion was referred to Magistrate Judge Hegarty for a Recommendation. See 28 U.S.C § 636(b)(1); Fed. R. Civ. P. 72.

A Recommendation of United States Magistrate Judge was issued on December 18, 2015. Magistrate Judge Hegarty noted therein that the amended complaint Plaintiff sought to file was more properly labeled as the "Fifth Amended Complaint." He then recommended that Plaintiff's motion for leave to amend be granted in part and denied in part. Specifically, he recommended it be granted to the extent Plaintiff seeks to add two Defendants—Erin L. Ashby and Michelle Wesolowski—and ten additional claims which

flow from alleged retaliatory behavior by these two as well as by the other Defendants. Magistrate Judge Hegarty recommended dismissing the inclusion of the Free Exercise Claim, as this is identical to the claim that was dismissed by Judge Krieger on September 30, 2015. Finally, the Recommendation noted that Plaintiff improperly continues in the most recent amended complaint to assert his Religious Land Use and Institutionalized Persons Act “[RLUIPA]” claim against Defendants in their individual and official capacities; however, only the *individual* capacity RLUIPA claims remain per Judge Krieger’s Order [see ECF No. 47]. Thus, Magistrate Judge Hegarty recommended that all references to the official capacity RLUIPA claims should be stricken.

The Recommendation advised that written objections were due within fourteen (14) days of service thereof. (Recommendation at 1 n. 1.) No objections having been filed, I am vested with discretion to review the Recommendation “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t 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”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”¹ See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

¹ Note, this standard of review is something less than a “clearly erroneous or contrary to law” standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review, Fed. R. Civ. P. 72(b).

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Judge Hegarty's findings and recommendations, which are well reasoned and supported by the record. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge dated December 18, 2015 (ECF No. 107) is **AFFIRMED and ADOPTED**. In accordance therewith, it is

ORDERED that Plaintiff's Motion for Leave to File an Amended Complaint (ECF No. 89) is **GRANTED IN PART AND DENIED IN PART**. It is **GRANTED** to the extent Plaintiff seeks to add Defendants Erin L. Ashby and Michelle Wesolowski and ten additional claims which flow from alleged retaliatory behavior by the Defendants. The motion is **DENIED** as to the Free Exercise Claim asserted in the amended complaint, and this claim is **DISMISSED**. It is

FURTHER ORDERED that the official capacity RLUIPA claims are **STRICKEN**. Finally, it is

ORDERED that barring exceptional circumstances, no further amendments to the complaint will be allowed.

Dated: April 7, 2016

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior United States District Judge