

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

Civil Action No. 14-cv-03441-REB-MJW

HOWARD E. JACOBSEN,

Plaintiff,

v.

THE BANK OF DENVER,

Defendant.

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

Blackburn, J.

The matter before me is the magistrate judge's **Report & Recommendation on The Bank of Denver's Partial Motion To Dismiss** [#36],¹ filed May 4, 2015. No objection having been timely filed to the recommendation, I review it for plain error only. **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.

THEREFORE, IT IS ORDERED as follows:

¹ "[#36]" 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.

1. That the magistrate judge's **Report & Recommendation on The Bank of Denver's Partial Motion To Dismiss** [#36], filed May 4, 2015, is approved and adopted as an order of this court;
2. That defendant **The Bank of Denver's Partial Motion To Dismiss** [#24], filed March 20, 2015, is granted;
3. That the "Second Claim for Relief (ADAAA Regarded As Claim)" and "Third Claim for Relief (ADAAA/Actual Disability Claim)" asserted in the **Complaint** [#1], filed December 22, 2014, are dismissed without prejudice for failure to exhaust administrative remedies;
4. That the "Fourth Claim for Relief (FMLA [29 U.S.C. §§ 2601 *et seq.*] – Interference With Right To Leave)" asserted in the **Complaint** [#1], filed December 22, 2014, is dismissed with prejudice as barred by limitations; and
5. That at the time judgment enters, judgment shall enter on behalf of defendant, The Bank of Denver, against plaintiff, Howeward E. Jacobsen, as follows:
 - a. That judgment without prejudice shall enter as to the "Second Claim for Relief (ADAAA Regarded As Claim)" and "Third Claim for Relief (ADAAA/Actual Disability Claim)" asserted in the **Complaint** [#1], filed December 22, 2014; and
 - b. That judgment with prejudice shall enter as to the "Fourth Claim for Relief [FMLA (29 U.S.C. §§ 2601 *et seq.*) – Interference With Right To Leave)" asserted in the **Complaint** [#1], filed December 22, 2014.

Dated June 8, 2015, at Denver, Colorado.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Bob Blackburn".

Robert E. Blackburn
United States District Judge