
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANTHONY BRIAN HAWKINS,

Plaintiff,

v.

ADAM F. GHIZ, et al.,

Defendant.

**MEMORANDUM DECISION AND
ORDER:**

- **MODIFYING AND ADOPTING [43] REPORT AND RECOMMENDATION; and**
- **DENYING [48] MOTION TO WITHDRAW NO. [29] MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Case No. 2:18-cv-00466-DBB-JCB

District Judge David Barlow

Magistrate Judge Jared C. Bennett.

The Report and Recommendation¹ issued by United States Magistrate Judge Jared C. Bennett on August 21, 2020 recommends that Plaintiff's federal claims in this action be dismissed with prejudice, state law claims in this action be dismissed without prejudice, and that Plaintiff's October 29, 2019 motion for leave to file a second amended complaint be denied.²

The parties were notified of their right to file objections to the Report and Recommendation within 14 days of its service pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72.³ Plaintiff requested an extension of time until October 10, 2020 to file any objection.⁴ That request was granted.⁵

¹ Report and Recommendation, [ECF No. 43](#), filed August 21, 2020.

² *Id.* at 19.

³ *Id.*

⁴ Motion for Extension of Time, [ECF No. 45](#), filed September 8, 2020.

⁵ Order Granting Motion for Extension of Time, [ECF No. 46](#), filed September 10, 2020.

However, before the end of the objection period Plaintiff filed a motion to withdraw his motion for leave to file a second amendment complaint (Motion to Withdraw)⁶ and then filed a new motion for leave to file a second amendment complaint.⁷ Plaintiff then filed an untimely objection after the expiration of the time he requested.⁸

Because no party filed a timely written objection to the Report and Recommendation by the specified deadline requested by the Plaintiff, and because the analysis and conclusions of the Magistrate Judge are sound, the Report and Recommendation of Magistrate Judge Bennett is adopted with the following modifications: because Magistrate Judge Bennett did not have that motion for leave to file before him, the court does not adopt the futility analysis contained in the August 21, 2020 Report and Recommendation and is dismissing Plaintiff's federal claims without prejudice, rather than with prejudice. The court requests that Magistrate Judge Bennett review Plaintiff's newly filed motion for leave to file second amended complaint⁹ and, in accordance with 28 U.S.C. §636 (b)(1)(B), issue a report and recommendation on whether that motion should be granted or denied.

Plaintiff's Motion to Withdraw will not be considered and will be denied. The Magistrate Judge issued a Report and Recommendation for consideration by this court that focused specifically on the motion to amend that Plaintiff seeks to withdraw. Federal statute and rule specify that Plaintiff's permitted course of action is to timely *object* to that Report and Recommendation,¹⁰ not seek to avoid the operation of that Report and Recommendation or

⁶ Motion to Withdraw Motion for Leave to File Second Amended Complaint, [ECF No. 48](#), filed September 25, 2020.

⁷ Motion for Leave to File Second Amended Complaint, [ECF No. 49](#), filed September 25, 2020.

⁸ Objection to Report and Recommendation, [ECF No. 50](#), filed October 14, 2020.

⁹ Motion for Leave to File Second Amended Complaint, [ECF No. 49](#), filed September 25, 2020.

¹⁰ See 28 U.S.C. § 636 and Fed. R. Civ. P. 72

subsequent court order by seeking to withdraw the motion that was the subject of the Magistrate Judge's Report and Recommendation.

ORDER

IT IS HEREBY ORDERED that the Report and Recommendation¹¹ is ADOPTED AS MODIFIED. Plaintiff's federal claims in this action are DISMISSED WITHOUT PREJUDICE, Plaintiff's state law claims in this action are DISMISSED WITHOUT PREJUDICE, and Plaintiff's motion for leave to file a second amended complaint dated October 29, 2019 IS DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion to withdraw his motion for leave to file a second amendment complaint¹² is also DENIED.

Signed November 19, 2020.

BY THE COURT



David Barlow
United States District Judge

¹¹ Report and Recommendation, [ECF No. 43](#), filed August 21, 2020.

¹² Motion to Withdraw Motion for Leave to File Second Amended Complaint, [ECF No. 48](#), filed September 25, 2020.