

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02317-REB-KLM

BERNARD KENNETH MYERS,

Plaintiff,

v.

THE CITY OF LOVELAND, COLORADO,

Defendant.

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MINUTE ORDER

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ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Summary Judgment** [Docket No. 9; Filed September 21, 2012]. No Response was filed.

This matter is further before the Court on Plaintiff's **Motion to Amend Response** [Docket No. 26; Filed October 9, 2012]. On October 18, 2012, Defendant filed a Response [#29]. No Reply was filed.

This matter is further before the Court on Plaintiff's **Motion to Amend Complaint and Motion to Withdraw Summary Motion** [Docket No. 47; Filed November 5, 2012]. On November 6, 2012, Defendant filed a Response [#49]. No Reply was filed.

This matter is further before the Court on Defendant's **Motion for Leave to Supplement Defendant City of Loveland, Colorado's Motion to Dismiss** [Docket No. 52; Filed November 16, 2012]. On December 7, 2012, Plaintiff filed a Response [#56]. On December 11, 2012, Defendant filed a Reply [#58].

This matter is further before the Court on Plaintiff's **Motion to Extend Deadline for Joinder of Parties** [Docket No. 55; Filed December 7, 2012]. On December 12, 2012, Defendant filed a Response [#59]. No Reply was filed.

Finally, this matter is further before the Court on Defendant's **Motion to Strike Amended Complaint** [Docket No. 63; Filed January 30, 2013]. On February 6, 2013, Plaintiff filed a Response [#65]. On February 14, 2013, Defendant filed a Reply [#66].

On October 29, 2012, the Court entered a Scheduling Order [#41] in this matter. Then, on October 31, 2012, the Court imposed a stay in this matter on all proceedings pending resolution of Defendant's pending Motion to Dismiss [#23]. Order [#46].

IT IS HEREBY **ORDERED** that Plaintiff's Motion to Extend Deadline for Joinder of Parties [#55] is **DENIED without prejudice**, for failure to comply with Local Rule 6.1D., which states, in part, that "[a]ny motion for extension of time shall . . . state the date certain for the requested extension of time." See *Motion* [#55] (in which Plaintiff states that he seeks "an additional 2-3 months" extension of the deadline for joinder of parties).

IT IS FURTHER **ORDERED** that Defendant's Motion to Strike Amended Complaint [#63] is **GRANTED**. The tendered Third Amended Complaint [#62] was submitted on January 30, 2013. Plaintiff must file a motion for leave to amend complaint with any tendered amended complaint. Any such motion must comply with Fed. R. Civ. P. 16(b) and 15(a). Although Plaintiff filed a Motion to Amend Complaint on November 5, 2012, the time frame between the filing of that motion and the filing of the tendered Third Amended Complaint on January 30, 2013, is too long to consider the documents jointly filed, especially as Defendant had already filed a Response to the Motion to Amend Complaint before Plaintiff's submission of the tendered Third Amended Complaint. Accordingly,

IT IS FURTHER **ORDERED** that the Clerk of the Court shall **STRIKE** Plaintiff's tendered Third Amended Complaint.[#62].

IT IS FURTHER **ORDERED** that Plaintiff's Motion to Amend Complaint and Motion to Withdraw Summary Motion [#47] is **GRANTED in part and DENIED without prejudice in part**. The Motion [#47] is **denied without prejudice** to the extent it seeks leave to amend the complaint. If Plaintiff, who proceeds in this matter *pro se*, is seeking leave to file an Amended Complaint, he must file a motion which complies with the federal and local rules, namely, Fed. R. Civ. P. 15, and which includes the proposed Amended Complaint as a document separate from the Motion. The Court will not permit piecemeal adjudication of Plaintiff's case, thus Plaintiff must include all claims he seeks to bring and defendants he intends to name in the proposed Amended Complaint. The Motion [#47] is **granted** to the extent it seeks to withdraw Plaintiff's pending Motion for Summary Judgment [#9]. Accordingly,

IT IS FURTHER **ORDERED** that Plaintiff's Motion for Summary Judgment [#9] is deemed **WITHDRAWN**.

IT IS FURTHER **ORDERED** that Plaintiff's Motion to Amend Response [#26] is **GRANTED**. The Court shall consider Plaintiff's statements made in the Motion to Amend Response [#26] in conjunction with his Response [#25] to Defendant's pending Motion to

Dismiss [#23].<sup>1</sup>

IT IS FURTHER ORDERED that Defendant's Motion for Leave to Supplement Defendant City of Loveland, Colorado's Motion to Dismiss [#52] is **GRANTED in part**. The Court shall consider the additional jurisdictional arguments raised in the Motion [#52] in connection with Defendant's pending Motion to Dismiss [#23], but no further briefing from Defendant is permitted.

IT IS FURTHER ORDERED, *sua sponte*, that, **on or before May 24, 2013**, Plaintiff shall either: (1) file a motion for leave to amend complaint along with a tendered amended complaint that complies with Rules 16(b) and 15(a), as outlined above; **or** (2) file a brief of no more than 5 pages that addresses the jurisdictional arguments raised in Defendant's Motion for Leave to Supplement Defendant City of Loveland, Colorado's Motion to Dismiss [#52].

Dated: May 3, 2013

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<sup>1</sup> The Court notes that the mandates of Rule 15, as raised by Defendant in its Response [#29], only apply to motions to amend pleadings, not motions to amend briefs.