

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Case No. 08-cv-01094-PAB-KLM

KEVIN D. GUARNEROS and  
SHERRON L. LEWIS, JR.,

Plaintiffs,

v.

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
STEPHANIE O'MALLEY, and  
DIANE BAILEY,

Defendants.

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**ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION**

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This matter is before the Court on the Recommendation of United States Magistrate Judge Kristen L. Mix filed on July 8, 2009 [Docket No. 67]. The Recommendation states that objections to the Recommendation must be filed within ten days after its service on the parties. See *also* 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on July 8, 2009. No party has objected to the Recommendation.

Court mail addressed to plaintiff Guarneros at his last known address has been returned as undeliverable since September, 2008. Plaintiff Guarneros has failed to inform the court of his current mailing address and therefore bears responsibility for not receiving a copy of the Recommendation.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. *Summers v. Utah*, 927 F.2d

1165, 1167 (10th Cir. 1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“[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”). In this matter, I have reviewed the Recommendation to satisfy myself that there is “no clear error on the face of the record.”<sup>1</sup> See Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, I have concluded that the Recommendation is a correct application of the facts and the law. However, rather than dismissing the claims with prejudice as recommended by the magistrate judge, the Court will dismiss such claims without prejudice. See Fed. R. Civ. P. 4(m) (if service not effectuated, dismissal is “without prejudice”). Accordingly, it is

**ORDERED** as follows:

1. The Recommendation of United States Magistrate Judge [Docket No. 67] is accepted.
2. All claims against defendants Deutsche Bank Trust Company Americas, Stephanie O’Malley and Diane Bailey are dismissed without prejudice.
3. This matter, and all claims asserted therein, is dismissed without prejudice.

DATED July 27, 2009.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge

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<sup>1</sup>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).

