

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

Civil Action No. 08-cv-01897-PAB-CBS

OTO SOFTWARE, INC., a Texas corporation,

Plaintiff,

v.

HIGHWALL TECHNOLOGIES, LLC, a Florida limited liability company, and
RICH SWIER,

Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Craig B. Shaffer filed on July 5, 2011 [Docket No. 139]. The Recommendation states that objections to the Recommendation must be filed within fourteen days after its service on the parties. *See also* 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on July 5, 2011. No party has objected to 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.”¹ See Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, I have concluded that the Magistrate Judge’s thorough and well-researched Recommendation is a correct application of the facts and the law. Accordingly, it is

ORDERED as follows:

1. The Recommendation of United States Magistrate Judge [Docket No. 139] is ACCEPTED.

2. Plaintiff’s Motion for Judgment Against Highwall Technologies, LLC and Rich Swier [Docket No. 127] is GRANTED in part and DENIED in part.

3. Judgment shall enter against defendant Highwall Technologies, LLC as to claim two (breach of contract) and claim three (breach of the implied covenant of good faith and fair dealing). Damages and attorney’s fees shall be awarded under these claims in the amount of \$77,811 and \$69,734 respectively.

4. Judgment shall enter finding defendants Highwall Technologies, LLC and Rich Swier jointly and severally liable as to claim one (copyright infringement) in the total amount of \$832,000.

5. Plaintiff’s Motion for Judgment Against Highwall Technologies, LLC and Rich Swier [Docket No. 127] is denied to the extent it seeks judgment against defendants Highwall Technologies, LLC and Rich Swier under claim four (fraud).

¹This 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).

DATED July 27, 2011.

BY THE COURT:

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