

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

Civil Action No. 08-cv-02624-PAB-KMT

STEPHAN DARRIS,

Plaintiff,

v.

D/S PUGLIESE,  
D/S SHAFFER,  
D/S ST. GERMAIN,  
LPN ROY ROBINSON, and  
D/S DAUGHERTY,

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 Kathleen M. Tafoya filed on March 9, 2010 [Docket No. 107]. 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 March 10, 2010.

On March 25, 2010, plaintiff filed a letter directed to the district judge [Docket No. 108]. The letter does not object to the Recommendation, but rather asks that Magistrate Judge Tafoya be recused from his case or that this matter be dismissed without prejudice in order for him to hire an attorney upon his release "within 90 days." Plaintiff, however, does not state any basis for Magistrate Judge Tafoya's recusal from this case. As a result, that request is denied. Moreover, Magistrate Judge Tafoya

instructed plaintiff that, if he wanted to dismiss this case, he needed to file “an appropriate written Motion to Dismiss.” See Recommendation [Docket No. 107], at 4 n.4. Plaintiff has not done so. Plaintiff filed his complaint in this case on December 3, 2008 [Docket No. 3]. All defendants filed answers and summary judgment motions. As a result, defendants have a right to object to voluntary dismissal by plaintiff. See Fed. R. Civ. P. 41(a)(2). Because plaintiff did not follow Magistrate Judge Tafoya’s directions on how plaintiff should file a motion to dismiss, the Court denies such request and turns now 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.”<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. Accordingly, it is

**ORDERED** as follows:

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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).

1. Plaintiff's request in his letter filed on March 25, 2010 [Docket No. 108] that Magistrate Judge Tafoya be recused or, in the alternative, that this action be dismissed without prejudice is denied.

2. The Recommendation of United States Magistrate Judge [Docket No. 107] is ACCEPTED.

3. Defendants Pugliese, Shaffer, St. Germain, and Daugherty's Motion for Summary Judgment [Docket No. 101] is GRANTED, and the claims against them are dismissed without prejudice.

4. Defendant Robinson's Motion for Summary Judgment [Docket No. 99] is GRANTED, and the claims against him are dismissed with prejudice.

5. All other pending motions are DENIED as moot.

DATED April 27, 2010.

BY THE COURT:

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