

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

Civil Case No. 08-cv-02749-PAB-KMT

PHILIP ANDREW WOLF,

Plaintiff,

v.

JAMES PETROCK,

Defendant.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Kathleen M. Tafoya filed on September 24, 2009 [Docket No. 41]. 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 September 24, 2009. No party has objected to the Recommendation.¹

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

¹Within the ten-day period for filing objections to the Recommendation, plaintiff filed a motion to recuse the magistrate judge [Docket No. 42]. However, this motion does not claim to be an objection to the Recommendation and will not be treated as such.

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.”² 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:

1. The Recommendation of United States Magistrate Judge [Docket No. 41] is ACCEPTED.
2. Defendant’s Motion to Dismiss With Prejudice, converted to a motion for summary judgment [Docket No. 15] is GRANTED;
3. Plaintiff’s Motion for Summary Judgment [Docket No. 22] is DENIED;
4. This case is DISMISSED with prejudice, as barred by *res judicata*;
5. Costs are awarded to defendant pursuant to 28 U.S.C. § 1920 and D.C.COLO.LCivR 54.1.

DATED October 19, 2009.

BY THE COURT:

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

²This 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).