

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 09-cv-02265-WYD-BNB

JOSEPH A. ELLSWORTH,

Plaintiff,

v.

PAT MONTEZ,
CHARLES OLIN,
A. ZAVARAS,
CATHY HOIST,
MARSHALL GRIFFITH,
PAULA FRANTZ, and
BURL McCULLAR,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court in connection with the Plaintiff's Motion that Summary Judgment Judgment [sic] Against Plaintiff be Denied and Case be Allowed to Proceed to Trial or Alternately Summery [sic] Judgement [sic] for Plaintiff Be Granted [ECF No. 86], filed August 8, 2011, and Defendant's Motion for Summary Judgment [ECF No. 89], filed August 12, 2011. Plaintiff's motion was referred to United States Magistrate Judge Boland for a recommendation by Order of Reference dated August 9, 2011 [ECF No. 87]. Defendant's motion was also referred to United States Magistrate Judge Boland for a recommendation by Order of Reference dated August 15, 2011 [ECF No. 90]. Magistrate Judge Boland issued a Recommendation on October 3, 2011 [ECF No. 96]. The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), D.C.COLO.LR. 72.1.

Magistrate Judge Boland advised the parties that written objections were due

within fourteen (14) days after service of a copy of the Recommendation.

(Recommendation at 14.) Despite this advisement, no objections were filed to the Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[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”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”¹ See FED. R. CIV. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Boland’s Recommendation is thorough, well-reasoned and sound. I agree with Magistrate Judge Boland that Plaintiff’s pending motion [ECF No. 86], filed August 8, 2011 should be denied and Defendant’s pending motion [ECF No. 89], filed August 12, 2011 should be granted for the reasons stated in both the Recommendation and this Order. Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Boland [ECF No. 96] is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendant’s Motion for Summary Judgment [ECF No. 89], filed August 12, 2011, is **GRANTED**. Judgment shall enter in favor of Defendant on

¹ Note, 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).

Plaintiff's remaining claim, which will terminate the case. It is

FURTHER ORDERED that Plaintiff's Motion that Summary Judgment Judgment [sic] Against Plaintiff be Denied and Case be Allowed to Proceed to Trial or Alternately Summery [sic] Judgement [sic] for Plaintiff Be Granted [ECF No. 86], filed August 8, 2011, is **DENIED**.

Dated: October 25, 2011

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge