

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

Civil Action No. 09-cv-02901-WYD-KLM

MICHAEL MCCOY; and  
SARAY MCCOY, husband and wife,

Plaintiffs,

v.

STRYKER CORPORATION, a Michigan corporation;  
STRYKER SALES CORPORATION, a Michigan corporation;  
I-FLOW CORPORATION, a Delaware corporation;  
DJO, LLC (f/k/a DJ ORTHOPEDICS, LLC), a Delaware limited liability company;  
DJO, INCORPORATED (f/k/a DONJOY), a Delaware corporation; and  
DOES 1-20,

Defendants.

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

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THIS MATTER is before the Court on Plaintiff's Motion to Dismiss (docket #9), filed April 23, 2010. The motion was referred to Magistrate Judge Kristen L. Mix for a Recommendation by Order of Reference dated December 18, 2009. Magistrate Judge Mix issued a Recommendation on April 26, 2010. Specifically, Magistrate Judge Mix recommends that the pending motion be granted and that this case be dismissed without prejudice. (Recommendation at 2.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b).

Magistrate Judge Mix advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation

at 2.) 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."<sup>1</sup> 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 Mix's Recommendation is thorough, well reasoned and sound. I agree with Magistrate Judge Mix that the pending motion should be granted and that this case should be dismissed without prejudice 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 Mix (docket #11), filed April 26, 2010, is **AFFIRMED** and **ADOPTED**.

In accordance therewith, it is

FURTHER ORDERED that the Plaintiff's Motion to Dismiss (docket #9) is **GRANTED**. It is

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<sup>1</sup> 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).

FURTHER ORDERED that this case is **DISMISSED WITHOUT PREJUDICE**.

Dated: May 17, 2010

BY THE COURT:

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