

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Robert E. Blackburn**

Civil Case No. 10-cv-00912-REB-MEH

TINA GARCIA,

Plaintiff,

v.

BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA, a wholly owned subsidiary of  
the Guardian Life Insurance Company of America,

Defendant.

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

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**Blackburn, J.**

This matter is before me on the following: (1) **Recommendation To Dismiss This Case Without Prejudice for Failure To Prosecute** [#56]<sup>1</sup> filed October 14, 2010; and (2) **Plaintiff Motion for an Order To Voluntarily Dismiss Without Prejudice or Costs, Under FRCP 41 for Legal and Personal Disability** [#57] filed October 15, 2010. I approve and adopt the recommendation and deny the motion to dismiss as moot.

I have reviewed both the motion to dismiss [#57] and the status report [#62] filed by the plaintiff to determine if they should be read as objections to the recommendation. Neither the motion to dismiss nor the status report contains objections to the recommendation.

Because no objections to the recommendation have been filed, I review it only for

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<sup>1</sup> “[#56]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

plain error. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10<sup>th</sup> Cir. 2005).<sup>2</sup> Because the plaintiff is proceeding *pro se*, I have construed her pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10<sup>th</sup> Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991).

The recommendation is detailed and well-reasoned. Finding no error in the magistrate judge's reasoning and recommended disposition, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted. The magistrate judge recommends that this case be dismissed without prejudice as a sanction for the plaintiff's failure to appear at court-ordered conferences, to participate in the preparation of a scheduling order, and to submit timely disclosures as required by FED. R. CIV. P. 26(a). Such a dismissal renders moot the plaintiff's motion to dismiss, which was filed after the recommendation of the magistrate judge.

**THEREFORE, IT IS ORDERED** as follows:

1. That the **Recommendation To Dismiss This Case Without Prejudice for Failure To Prosecute** [#56] filed October 14, 2010, is **APPROVED AND ADOPTED** as an order of this court;

2. That the **Plaintiff Motion for an Order To Voluntarily Dismiss Without Prejudice or Costs, Under FRCP 41 for Legal and Personal Disability** [#57] filed

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<sup>2</sup> This standard pertains even though plaintiff is proceeding *pro se* in this matter. ***Morales-Fernandez***, 418 F.3d at 1122.

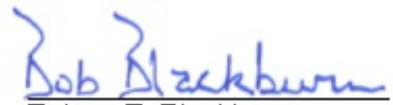
October 15, 2010, is **DENIED** as moot;

3. That the plaintiff's motion for preliminary injunction [#5] and the defendant's motion to consolidate [#44] are **DENIED** as moot; and

4. That this case is **DISMISSED WITHOUT PREJUDICE**.

Dated December 7, 2010, at Denver, Colorado.

**BY THE COURT:**

  
Robert E. Blackburn  
United States District Judge