

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

Civil Action No. 10-cv-02141-PAB-MEH

MARCUS WILLIAMS,

Plaintiff,

v.

BAC HOME LOANS SERVICING, LP,

Defendant.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Michael E. Hegarty filed on December 3, 2010 [Docket No. 29]. The Recommendation recommends that the Court dismiss this action for failure to prosecute and, specifically, for plaintiff's failure to respond to defendant's motion to dismiss. 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 December 6, 2010. On December 23, 2010, plaintiff filed his Motion of Voluntary Withdrawal Without Prejudice [Docket No. 30]. This pleading does not object to the Recommendation. Moreover, other than the suggestion in its title, the pleading does not state that plaintiff is withdrawing his claims in this matter. The Court will not treat this pleading as an objection.

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.”¹ 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. 29] is ACCEPTED.

2. This case is dismissed without prejudice for plaintiff’s failure to prosecute.

3. Defendant’s motion to dismiss [Docket No. 19] is denied as moot.

4. Defendant is awarded its fees incurred by its appearance at the Scheduling Conference on November 30, 2010. Defendant may submit a motion for fees within five business days of the date of this Order.

DATED December 27, 2010.

BY THE COURT:

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

¹This 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).