

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

Civil Action No. 11-cv-00581-WYD-KMT

WYATT T. HANDY JR.,

Plaintiff,

v.

SGT. CUMMINGS, Individual and Official Capacity,
DEP. WENDELBURG, Individually,
DEP. THAO, Individually,
DEP. LIGON, Individually,
DEP. ELLEDGE, Individually,
DEP. GIRRARD, Individually,
MRS. GRETCHEN, Individual Capacity,
WOOD, Official Capacity,
MRS. MOLLENDOR, Individually,
DEP. LITWILER Individually,
NANCY, Individual and Official Capacity,
DEP. MORRISSON, Individual,
DEP. KRAUS, Individual,
DEP. GALLEGOS, Individual,
DEP. HUNT, Individual, and
SGT. CLARK, Individual and Official Capacity,
SGT. DOIZAKI, individual & official capacity,
DEP. EMERSON, individual,
DEP KLEINHEKSEL, individual,
SHERIFF GRAYSON ROBINSON, individual & official capacity,
CAPT. SAUTER, individual & official capacity,
LT. WHITIKER, individual & official capacity,
SGT. RANKIN, individual & official capacity,
DEP. FREEMAN, individual,
DEP. LONGFELLOW, individual, and
DEP. HAMM, individual,

Defendants.

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

THIS MATTER is before the Court on Magistrate Judge Tafoya's Recommendation dated November 29, 2011 (ECF No. 115). Magistrate Judge Tafoya issued the Recommendation as a result of Plaintiff's failure to respond to her November 8, 2011 Order to Show Cause (ECF No. 114). In the Recommendation, Magistrate Judge Tafoya recommends that the claims against Defendant Morrison be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service. (ECF No. 115, Recommendation at 3). The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b).

Magistrate Judge Tafoya advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation at 3-4). 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.

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).

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Tafoya's Recommendation is thorough, well reasoned and sound. I agree with Magistrate Judge Tafoya that the claims against Defendant Morrison should be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service 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 Tafoya (ECF No. 115) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that the claims against Defendant Morrison are **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 4(m) for lack of service.

Dated: December 21, 2011

BY THE COURT:

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