

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 11-cv-1203-WJM-KMT

MICHAEL L. MENDENHALL,

Plaintiff-Counterclaim Defendant,

v.

BANKERS LIFE AND CASUALTY COMPANY, an Illinois Corporation,
CNO FINANCIAL GROUP, INC, a Delaware Corporation f/k/a CONSECO, INC.,

Defendants-Counterclaim Plaintiffs.

**ORDER ADOPTING MARCH 12, 2014 RECOMMENDATION OF MAGISTRATE
JUDGE AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on the March 12, 2014 Recommendation of United States Magistrate Judge Kathleen M. Tafoya (the "Recommendation") (ECF No. 93) that Defendants' Motion for Summary Judgment (ECF No. 86) be granted. The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen days after being served with a copy of the Recommendation. (ECF No. 93, at 12-13.) Despite this advisement, no objections to the Magistrate Judge's Recommendation have to date been received.¹

¹ After the Recommendation was issued, Plaintiff filed a "Motion for Forwith Termination of Summary Judgment and Dismissal Without Prejudice" which argues that the case is "soundly premature" because his fraud conviction is not final. (ECF No. 94 at 1.) The Court has reviewed Plaintiff's Motion and finds that it does not specifically object to any portion of the Recommendation. Rather, Plaintiff moves to voluntarily dismiss his case so that he can re-file it once his criminal convictions have been resolved. (*Id.* at 2.) As this case has been pending for

The Court concludes that the Magistrate Judge's analysis was thorough and sound, and that there is no clear error on the face of the record. See Fed. R. Civ. P. 72(b) advisory committee's note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); see also *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) ("In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate.").

In accordance with the foregoing, the Court ORDERS as follows:

- (1) The Magistrate Judge's Recommendation (ECF No. 93) is ADOPTED in its entirety;
- (2) Defendants' Motion for Summary Judgment (ECF No. 86) is GRANTED;
- (3) Plaintiff's Motion for Forthwith Termination of Summary Judgment and Dismissal Without Prejudice (ECF No. 94) is DENIED as MOOT; and
- (4) This case remains pending as to Defendant Bankers Life and Casualty Company's Counterclaim against the Plaintiff (ECF No. 12).

nearly three years and Defendant has incurred significant expenses defending against this action, the Court finds that granting Defendants' Motion for Summary Judgment is more appropriate than permitting Plaintiff to voluntarily dismiss his claims without prejudice. Moreover, the fact that Plaintiff's fraud conviction is not final is not determinative of any issue in this case because Plaintiff was terminated for cause before his conviction occurred. Thus, if Plaintiff's fraud conviction (or a portion thereof) is overturned by the appeals court, the result in this action would be the same.

Dated this 9th day of April, 2014.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William J. Martínez", written over a horizontal line.

William J. Martínez
United States District Judge

