

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

Civil Action No. 11-cv-02342-WJM-KLM

FRANKIE L. MCCONNELL,

Plaintiff,

v.

ANDREA CIRBO,  
DEBRA REILLY, and  
K. O'BRIEN

Defendants.

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**ORDER ADOPTING RECOMMENDATION AND DISMISSING CLAIMS  
AGAINST K. O'BRIEN WITHOUT PREJUDICE**

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This matter is before the Court on the January 25, 2012 Recommendation by United States Magistrate Judge Kristen L. Mix that Plaintiff's claims against Defendant K. O'Brien be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) and 41(b). (ECF No. 22.) 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. 22 at 3.) Within that fourteen day period, Plaintiff filed a Motion to Clarify stating that he did not understand what he needed to file and asking the Court to appoint him counsel for assistance. (ECF No. 26.) Magistrate Judge Mix denied Plaintiff's request for counsel but provided Plaintiff with some guidance as to what certain legal terms in

the Recommendation meant. (ECF No. 28.) Magistrate Judge Mix also extended Plaintiff's deadline for filing objections until February 21, 2012. (*Id.*) Despite this extension and the clarification provided by Magistrate Judge Mix, Plaintiff did not file an objection to the Recommendation.

“In the absence of timely objection, the district court may review a magistrate . . . [judge's] report under any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *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”). The Court concludes that the Magistrate Judge's analysis is correct and that “there is no clear error on the face of the record” associated with the Recommendation. See Fed. R. Civ. P. 72(b) advisory committee's note. Therefore, the Court hereby ADOPTS the Report of the United States Magistrate Judge as the findings and conclusions of this Court.

Accordingly, the Court ORDERS as follows:

1. Magistrate Judge Kristen L. Mix's January 25, 2012 Recommendation is ACCEPTED;
2. Plaintiff's claims against K. O'Brien are DISMISSED WITHOUT PREJUDICE;
3. The Clerk shall AMEND the caption to reflect that Defendant K. O'Brien has been terminated; and
4. All future filings should omit K. O'Brien as a Defendant.

Dated this 16<sup>th</sup> day of March, 2012.

BY THE COURT:

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

William J. Martínez  
United States District Judge