

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

Civil Action No. 12-cv-00676-WYD-KMT

BARRY O'NEILL;

Plaintiff,

v.

CALIFORNIA FARMS, INC.;  
JAMES ROBERTS; and,  
DAN FANTZ,

Defendants.

---

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

---

THIS MATTER is before the Court on: (1) plaintiff, Barry O'Neill's, Motion For Entry Of Default And Default Judgment [ECF No. 8]; (2) plaintiff, Barry O'Neill's, Motion For Entry Of Default And Default Judgment Against Defendant Dan Fantz [ECF No. 28]; (3) defendant, Dan Fantz's, Motion To Dismiss Pursuant To FRCP Rule 12(b)(2) [Lack Of Personal Jurisdiction] and Rule 12(b)(3) [Improper Venue] Or, In The Alternative, To Transfer From Improper Venue [28 USC § 1406(a)] Or To Transfer For Convenience [28 USC § 1404(a)] [ECF No. 31]; (4) plaintiff, Barry O'Neill's, Motion To Strike Defendant's Motion To Dismiss And Re-Urging Motion For Default Judgment [ECF No. 32]; and, (5) Magistrate Judge Tafoya's Amended Recommendation [ECF No. 38], which incorporates a recommendation on all pending motions in this matter. Magistrate Judge Tafoya's Recommendation [ECF No. 38] is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), FED. R. CIV. P. 72(b), D.C.COLO.LCivR. 72.1.

Magistrate Judge Tafoya issued her Recommendation [ECF No. 38] on February 14, 2013. She advised the parties that they had 14 days after service of a copy of the Recommendation [ECF No. 38] to file objections. ECF No. 38, pp. 37-38. As of Monday, September 30, 2013, no objections have been filed. No objections having been filed, I am vested with discretion to review the Recommendation [ECF No. 38] “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 [ECF No. 38] to “satisfy [my]self that there is no clear error on the face of the record.”<sup>1</sup> FED. R. CIV. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation [ECF No. 38], I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Tafoya’s Recommendation [ECF No. 38] is thorough, well-reasoned, and sound and I agree with the recommendations contained therein. Accordingly, it is

ORDERED that Magistrate Judge Tafoya’s Recommendation [ECF No. 38] is **AFFIRMED** and **ADOPTED**. Therefore, it is

FURTHER ORDERED that O’Neill’s Motion For Entry Of Default And Default Judgment [ECF No. 8] and Motion For Entry Of Default And Default Judgment Against Defendant Dan Fantz [ECF No. 28] are **GRANTED IN PART** and **DENIED IN PART**.

---

<sup>1</sup> 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).

The motions are **GRANTED** to the extent O'Neill seeks judgment on his first through twelfth claims for relief (the securities claims). As to those claims, **JUDGMENT IS ENTERED against the defendants, California Farms, Inc., James Roberts, and Dan Fantz, jointly and severally, for the sum of \$100,000, plus interest.** The motions are **DENIED** to the extent that O'Neill seeks judgment on his thirteenth and fourteenth claims (fraudulent misrepresentation and breach of fiduciary duty), and those claims are **DISMISSED WITH PREJUDICE.** The motions are **DENIED WITHOUT PREJUDICE** to the extent that O'Neill seeks attorney fees. If O'Neill wishes to request attorney fees, he **shall file an appropriate motion under Rule 54(d)(2) of the FEDERAL RULES of CIVIL PROCEDURE and D.C.COLO.LCivR 54.3.** It is

FURTHER ORDERED that defendant, Dan Fantz's, Motion To Dismiss Pursuant To FRCP Rule 12(b)(2) [Lack Of Personal Jurisdiction] and Rule 12(b)(3) [Improper Venue] Or, In The Alternative, To Transfer From Improper Venue [28 USC § 1406(a)] Or To Transfer For Convenience [28 USC § 1404(a)] [ECF No. 31] is **DENIED.** It is

FURTHER ORDERED that O'Neill's Motion To Strike Defendant's Motion To Dismiss And Re-Urging Motion For Default Judgment [ECF No. 32] is **GRANTED IN PART** and **DENIED IN PART.**<sup>2</sup> The motion is **GRANTED** to the extent O'Neill seeks judgment in his favor, and **JUDGMENT IS ENTERED** in his favor as outlined in this Order. The Motion is **DENIED** to the extent O'Neill seeks to strike Fantz's, Motion To Dismiss Pursuant To FRCP Rule 12(b)(2) [Lack Of Personal Jurisdiction] and Rule 12(b)(3) [Improper Venue] Or, In The Alternative, To Transfer From Improper Venue [28

---

<sup>2</sup> Magistrate Judge Tafoya recommended that this motion be denied and I agree with that recommendation. However, in this motion, O'Neill renews his argument for entry of default judgment in his favor. Because I grant default judgment in O'Neill's favor, this motion should be granted to the extent that he seeks default judgment.

USC § 1406(a)] Or To Transfer For Convenience [28 USC § 1404(a)] [ECF No. 31].

Dated: September 29, 2013.

BY THE COURT:

/s/ Wiley Y. Daniel

Wiley Y. Daniel

Senior U. S. District Judge