

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

Civil Action No. 12-cv-01228-WYD-KMT

WYATT T. HANDY, JR.,

Plaintiff,

v.

GREYSON ROBINSON, Sheriff,

Defendant.

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

THIS MATTER is before the Court on the following motions: (1) Plaintiff's "Motion for Order Class Action Certification and for the Appointment of Class Counsel" (ECF No. 25); (2) Plaintiff's "Motion to Amend Complaint" (ECF No. 17); and (3) "Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)" (ECF No. 19). (Recommendation at 8). In her Recommendation, Magistrate Judge Tafoya recommends that the pending motions be denied and that Plaintiff's Amended Complaint (ECF No. 9) be dismissed without prejudice for lack of subject matter jurisdiction. (Recommendation at 8). 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 8-9). 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.

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 pending motions should be denied and Plaintiff’s Amended Complaint should be dismissed without prejudice 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. 35) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Plaintiff’s “Motion for Order Class Action Certification and for the Appointment of Class Counsel” (ECF No. 25) is **DENIED**. It is

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).

FURTHER ORDERED that Plaintiff's "Motion to Amend Complaint" (ECF No. 17) is **DENIED**. It is

FURTHER ORDERED that "Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)" (ECF No. 19) is **DENIED** as moot. It is

FURTHER ORDERED that Plaintiff's Amended Complaint (ECF No. 9) is **DISMISSED** without prejudice for lack of subject matter jurisdiction.

Dated: March 8, 2013

BY THE COURT:

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