

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

Civil Action No. 12-cv-01359-WJM-KLM

LARRY ELEVThERIOS JOHNSON,

Plaintiff,

v.

ELIZABETH ARTEMIS,
MELANIE DAVIES,
KAMILA DAVIES,
KIMBERLEE PRATT,
NICOLE STANIC,
ROMANEE STANIC,
KAITLYN NOLAN,
RED LION HOTEL DENVER SOUTHEAST, and
KICKSTARTER.COM,

Defendants.

**ORDER ADOPTING IN PART JULY 12, 2013 RECOMMENDATION OF MAGISTRATE
JUDGE, GRANTING IN PART AND DENYING IN PART MOTIONS TO DISMISS, *SUA
SPONTE* DISMISSING REMAINING DEFENDANTS, AND CLOSING CASE**

This matter is before the Court on the July 12, 2013 Recommendation of United States Magistrate Judge Kristen L. Mix (the "Recommendation") (ECF No. 84) that the Court grant Defendants Nicolle Stanic, Romanee Stanic, Elizabeth Artemis, Kaitlyn Nolan and Kimberlee Pratt's Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 35), Defendants Melanie Davies and Kamila Davie's Motion to Dismiss for Lack of Subject Matter Jurisdiction (ECF No. 38), their Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted (ECF No. 39) and their Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 50). 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. 84, at 27.) Despite this advisement, no objections to the Magistrate Judge's Recommendation have to date been received.

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 with respect to the Magistrate Judge's analysis. 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.").

However, the Court notes that the Magistrate Judge appears to have summarized her recommendation incorrectly. In her analysis, the Magistrate Judge found that the Court has subject matter jurisdiction over the claims at issue in this case, and that the Court has personal jurisdiction over all of the Defendants. (ECF No. 84 at 11 & 16-17.) Despite these conclusions, with which the Court agrees, the Magistrate Judge recommended that the Motion to Dismiss challenging subject matter jurisdiction (ECF No. 38) and the Motion to Dismiss challenging personal jurisdiction (ECF No. 50) be granted. (ECF No. 84 at 25.) Given these inconsistencies, the Court will not adopt the Recommendation in whole. Rather, the Court will adopt the analysis set forth in the body of the Recommendation and declines to adopt the portion of the Conclusion which recommends that the Motions to Dismiss challenging personal jurisdiction and subject matter jurisdiction be granted.

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

1. The Magistrate Judge's Recommendation (ECF No. 84) is ADOPTED IN PART and REJECTED IN PART;
2. Defendants Melanie Davies and Kamila Davies Motion to Dismiss for Lack of Subject Matter Jurisdiction (ECF No. 38) is DENIED;
3. Defendants Melanie Davies and Kamila Davies Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 50) is DENIED;
4. Defendants Nicolle Stanic, Romanee Stanic, Elizabeth Artemis, Kaitlyn Nolan and Kimberlee Pratt's Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 35) is DENIED to the extent it seeks dismissal based on lack of personal or subject matter jurisdiction but GRANTED to the extent it seeks dismissal for failure to state a claim upon which relief could be granted;
5. Defendants Melanie Davies and Kamila Davies Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted (ECF No. 39) is GRANTED;
6. Plaintiff's copyright claims against Defendants Nicolle Stanic, Romanee Stanic, Elizabeth Artemis, Kaitlyn Nolan, Kimberlee Pratt, Melanie Davies, and Kamila Davies are DISMISSED WITH PREJUDICE for failure to state a claim upon which relief could be granted;
7. Plaintiff's copyright claims against Defendants Red Lion Hotel Denver Southeast and Kickstarter.com are *sua sponte* DISMISSED WITH PREJUDICE for failure to state a claim upon which relief could be granted in accordance with 28 U.S.C. § 1915(e)(2)(B)(ii);
8. The Court DECLINES to exercise supplemental jurisdiction over Plaintiff's state

law claims and Plaintiff's state law claims are DISMISSED WITHOUT
PREJUDICE;

9. Defendants Melanie Davies and Kamila Davies counterclaim is DISMISSED as
MOOT; and
10. The Clerk of the Court shall enter judgment in favor of Defendants. Defendants
shall have their costs.

Dated this 2nd day of August, 2013.

BY THE COURT:



William J. Martínez
United States District Judge