

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01778-WYD-KMT

MICHAEL C. FIELD,

Plaintiff,

v.

THOMAS BENEZE,

Defendant.

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

THIS MATTER is before the Court on Defendant's Motion to Dismiss (ECF No. 24), filed October 29, 2012. In her detailed Recommendation, Magistrate Judge Tafoya recommends that the pending motion be granted and that this case be dismissed. (Recommendation at 27). 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 27-28). 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 motion should be granted and that this case should be dismissed 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. 34) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendant's Motion to Dismiss (ECF No. 24) is **GRANTED**. It is

FURTHER ORDERED that I certify, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from Magistrate Judge Tafoya's Recommendation or this Order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). Thereafter, if Plaintiff files a notice of appeal he also must pay the full \$455.00 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth

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).

Circuit within thirty days of the court's final order in accordance with Fed. R. App. P. 24.

Dated: July 29, 2013

BY THE COURT:

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