

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

Civil Action No. 12-cv-01953-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

BRIAN BATZ,
TARA W. CAMERON, and
JOHN DOES 7, 9-11, 15-31, 33-36, and 39,

Defendants.

ORDER

This matter is before the Court on “Plaintiff’s Motion to Strike Defendant Brian Batz’s Defenses [CM/ECF 100]” filed January 25, 2013. This motion was referred to Magistrate Judge Hegarty. Magistrate Judge Hegarty issued a Recommendation on April 5, 2013, which 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. He recommends therein that Plaintiff’s Motion to Strike Defendant Brian Batz’s Defenses be granted in part and denied in part. See Recommendation at 1.

More specifically, Magistrate Judge Hegarty recommends that Mr. Batz’s First, Fifth, Sixth and Eight Defenses be stricken because they “cannot succeed under any circumstance.” Recommendation at 12. Thus, he recommends that the Motion to Strike be granted as to these defenses. On the other hand, Magistrate Judge Hegarty recommends that the Motion to Strike be denied as to the Third, Fourth, Seventh and

Ninth Defenses, finding that “Plaintiff has failed to demonstrate that Mr. Batz’s Third and Ninth Defenses should be stricken or that his Fourth and Seventh Defenses should be stricken altogether.” (*Id.*)

Magistrate Judge Hegarty advised the parties that they had fourteen (14) days after service of the Recommendation “in order to obtain reconsideration by the District Judge to whom this case is assigned.” Recommendation at 1 n. 1. He further advised that “[a] party’s failure to file such written objections . . . may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations.” *Id.* 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”). 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 agree with Magistrate Judge Hegarty’s thorough and well

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).

reasoned analysis as to Defendant Batz's Defenses and whether they should be stricken pursuant to Fed. R. Civ. P. 12(f). Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge dated April 5, 2013 (ECF No. 120) is **AFFIRMED and ADOPTED**. In accordance therewith, it is

ORDERED that "Plaintiff's Motion to Strike Defendant Brian Batz's Defenses [CM/ECF 100]" filed January 25, 2013 (ECF No. 102) is **GRANTED IN PART AND DENIED IN PART**. It is **GRANTED** as to Mr. Batz's First, Fifth, Sixth and Eight Defenses, and they are **STRICKEN**. It is **DENIED** as to Mr. Batz's Third, Fourth, Seventh and Ninth Defenses.

Dated: May 15, 2013

BY THE COURT:

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