

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 13-cv-00116-PAB-NYW

GINA POTTER,

Plaintiff,

v.

SALIDA POLICE DEPARTMENT OFFICER RUSSELL JOHNSON,
ANNA MARIE SMITH, an individual, and
DTJ INVESTMENT, LLC, d/b/a Comfort Inn,

Defendants.

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge [Docket No. 40] (the "Recommendation") filed on February 26, 2015. Magistrate Judge Nina Y. Wang recommends that Defendant Salida Police Department Officer Russell Johnson's Motion to Dismiss [Docket No. 36] be denied, but that the Court order plaintiff Gina Potter to show cause as to why this case should not be dismissed for lack of prosecution. Docket No. 40 at 9. The Recommendation states that objections to the Recommendation must be filed within fourteen days after its service on the parties. See 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on February 26, 2015. No party has objected to the Recommendation.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. See *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985)

("[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"). In this matter, the Court has reviewed the Recommendation to satisfy itself that there is "no clear error on the face of the record."¹ Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, the Court has concluded that the Recommendation is a correct application of the facts and the law.

Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge [Docket No. 40] is **ACCEPTED**. It is further

ORDERED that defendant Salida Police Department Officer Russell Johnson's Motion to Dismiss [Docket No. 36] is **DENIED**. It is further

ORDERED that, on or before March 27, 2015, plaintiff Gina Potter shall show cause why this case should not be dismissed for lack of prosecution.

DATED March 17, 2015.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge

¹This 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).