

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

Civil Action No. 13-cv-1672-WJM-KLM

ANDREA SMITH,

Plaintiff,

v.

T.W. CLYDE, O.D., P.C., d/b/a PIKES PEAK EYE CARE,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO
VACATE THE ORDER OF REFERENCE**

This matter is before the Court on Plaintiff's Motion to Vacate the Order of Reference ("Motion"), filed December 23, 2013. (ECF No. 21.) Defendant filed his Response to the Motion on December 26, 2013. (ECF No. 22.) Having reviewed the Motion and the record, the Court grants the Motion for the following reasons.

This matter was referred to United States Magistrate Judge Kristen L. Mix on December 17, 2013 pursuant to Defendant's Consent to Exercise of Jurisdiction by a United States Magistrate Judge filed December 17, 2013. (ECF No. 18.) Defendant's consent filing stated that "Plaintiff's consent was given by her counsel on the record during the Scheduling Conference held on September 17, 2013." (ECF No. 18 at 1.) However, Plaintiff in her Motion states that consent was not provided at the Scheduling

Conference, as evidenced by the Proposed Scheduling Order executed by the parties¹. (ECF No. 21 at 1). Consent Jurisdiction of Magistrate Judges is governed by D.C.COLO.LCivR 72.2(d) which states that “all parties shall complete and file a Consent to the Exercise of Jurisdiction by a United States Magistrate Judge form” and Federal Rule of Civil Procedure 73 which requires written consent from both parties to authorize a magistrate judge to conduct a civil action or proceeding. Because Plaintiff’s written consent is absent in this case, and her lack of consent is further evidenced by her Motion expressly opposing consent to the jurisdiction of the Magistrate Judge, this Court hereby GRANTS the Motion and withdraws the order of reference.

It is therefore ORDERED:

- (1) Plaintiff’s Motion is GRANTED; and
- (2) The Order of Reference entered at ECF No. 19 is WITHDRAWN. The above action is no longer referred for final disposition to Judge Mix; the reference to Judge Mix with respect to conducting all NDISPO proceedings in this case will, however, remain in full force and effect. All future pleadings should be designated as **13-cv-1672-WJM-KLM**.

¹ The Scheduling Order executed by the parties includes a section titled “Consent”, which states that “[a]ll parties have not consented to the exercise of jurisdiction of a magistrate judge”. (ECF No. 16 at 10.)

Dated this 16th day of January, 2013.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William J. Martinez".

William J. Martinez
United States District Judge