

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02385-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

MIKE CUDDY,

Defendant.

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

THIS MATTER is before the Court on Plaintiff's Motion to Dismiss Defendant/Counter-Plaintiff's Counterclaim (ECF No. 30), filed March 19, 2014. The motion was referred to Magistrate Judge Michael E. Hegarty for a Recommendation by Order of Reference (ECF No. 65). Magistrate Judge Hegarty issued a Recommendation (ECF No. 75) on January 27, 2015. The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Hegarty recommended therein that Plaintiff's Motion to Dismiss Defendant/Counter-Plaintiff's Counterclaim be granted. ECF No. 75 at pp. 1, 7-8. In sum, Magistrate Judge Hegarty explains that "Defendant has failed to plausibly allege that Plaintiff engaged in an abuse of process by filing this action or engaging in settlement negotiations." *Id.* at p. 7.

Magistrate Judge Hegarty advised the parties that they had fourteen (14) days to serve and file written, specific objections to the Recommendation. Despite this

advisement, no objections were filed to the Magistrate Judge's 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 (ECF No. 75), I am satisfied that there is no clear error on the face of the record. I find that the Recommendation is thorough, well-reasoned, and sound. I agree that Defendant failed to plausibly allege that Plaintiff engaged in abuse of process by means of filing this suit or partaking in settlement negotiations. I further agree that Plaintiff's motion to dismiss the counterclaim should be granted.

CONCLUSION

For the reasons stated above, it is

ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 75) is **AFFIRMED and ADOPTED**. Thus, it is

ORDERED that Plaintiff's Motion to Dismiss Defendant/Counter-Plaintiff's

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).

Counterclaim (ECF No. 30) is **GRANTED**.

Dated: March 5, 2015.

BY THE COURT:

s/ Wiley Y. Daniel _____
WILEY Y. DANIEL,
SENIOR UNITED STATES DISTRICT JUDGE