

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02787-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

DAN KENNEDY,

Defendant.

---

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

---

THIS MATTER is before the Court on Plaintiff's Motion to Strike Defendant's Affirmative Defenses (ECF No. 25). In his Recommendation, Magistrate Judge Hegarty recommends that the pending motion be granted. (Recommendation at 1, 4). 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 advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. (Recommendation at 1). 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."<sup>1</sup> 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 Hegarty's Recommendation is thorough, well reasoned and sound. I agree with Magistrate Judge Hegarty that the pending motion should be granted and that Defendant's first, third, fifth, sixth and eighth affirmative defenses should be stricken 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 Hegarty (ECF No. 27) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Plaintiff's Motion to Strike Defendant's Affirmative Defenses (ECF No. 25) is **GRANTED**. Defendant's first, third, fifth, sixth and eighth affirmative defenses are **STRICKEN**.

Dated: May 16, 2014

BY THE COURT:

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

---

<sup>1</sup> 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).