

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Christine M. Arguello**

Civil Action No. 14-cv-02751-CMA-NYW

BRUCE O. BOUMANN,

Plaintiff,

v.

BRIAN O'NEIL, in his individual and official capacity, and  
CITY AND COUNTY OF DENVER,

Defendants.

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**ORDER AFFIRMING AUGUST 10, 2015 AMENDED RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

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This matter is before the Court on the August 10, 2015 Amended Recommendation<sup>1</sup> by United States Magistrate Judge Nina Y. Wang that the Motion to Dismiss First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. # 28) filed by Defendants Brian O'Neil and City and County of Denver be granted in part and denied in part. (Doc. # 39.) The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation.

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<sup>1</sup> Magistrate Judge Wang issued a Recommendation on July 24, 2015 (Doc. # 38), but inadvertently did not include an advisement to the Parties of their rights to object under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). On August 10, 2015, Judge Wang issued the Amended Recommendation that did not differ in substance to the original Recommendation, but did include such an advisement.

(Doc. # 39.) Despite this advisement, no objections to the Recommendation issued by Magistrate Judge Wang were filed by either party.

“In the absence of timely objection, the district court may review a magistrate [judge’s] report under any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *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.”)).

The Court has reviewed all the relevant pleadings concerning the Motion to Dismiss First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) filed by Defendants and the Recommendation. Based on this review, the Court concludes that Magistrate Judge Wang’s thorough and comprehensive analysis and recommendation is correct and that “there is no clear error on the face of the record.” Fed. R. Civ. P. 72, advisory committee’s note. Therefore, the Court ADOPTS the Recommendation of Magistrate Judge Wang as the findings and conclusions of this Court.

Accordingly, it is ORDERED that the Amended Recommendation of the United States Magistrate Judge (Doc. # 39) is AFFIRMED and ADOPTED. It is

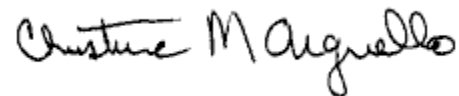
FURTHER ORDERED that the Motion to Dismiss First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) (Doc # 28) filed by Defendants is GRANTED IN PART and DENIED IN PART. Specifically,

1. Plaintiff’s municipal liability allegations and claims as against the City and County of Denver are DISMISSED WITHOUT PREJUDICE.

2. Plaintiff's claims as against Defendant O'Neil in his official capacity are DISMISSED WITHOUT PREJUDICE.
3. The Motion to Dismiss is DENIED in all other respects.

DATED: August 31, 2015

BY THE COURT:



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CHRISTINE M. ARGUELLO  
United States District Judge