

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No. 16-cv-00051-RBJ-CBS

VINCENT GABRIEL,

Plaintiff,

v.

EMERGENCY MEDICAL SPECIALISTS, PC, and
LAURENCE J. COHEN,

Defendants.

ORDER

This matter is before the Court on the November 1, 2016 Recommendation of Magistrate Judge Craig B. Shaffer [ECF No. 49]. The Recommendation addresses defendants' motion to dismiss for failure to state a claim upon which relief may be granted [ECF No. 16] and motion to dismiss for lack of subject matter jurisdiction [ECF No. 17]. 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 days after being served with a copy of the Recommendation. ECF No. 49 at 19–20. Despite this advisement, and permitting additional time for service and filing, no objection to Magistrate Judge Shaffer's Recommendation was filed by either party. "In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991).

The Court has reviewed the Recommendation and relevant filings. Based on this review, the Court concludes that Magistrate Judge Shaffer's analyses and recommendations are 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 as the findings and conclusions of this Court.

ORDER

1. Recommendations and Orders on Pending Referred Motions [ECF No. 49] is AFFIRMED and ADOPTED.

2. Defendants' F.R.C.P. 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted [ECF No. 16] and Defendants' F.R.C.P. 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction [ECF No. 17] are GRANTED. The federal claims against defendants are dismissed without prejudice, and the Court declines to exercise supplemental jurisdiction over the remaining state law claims.

3. As the prevailing parties, defendants are awarded their reasonable costs pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.¹

DATED this 21th day of February, 2017.

BY THE COURT:



R. Brooke Jackson
United States District Judge

¹ On January 31, 2017 (after plaintiff's opportunity to object to the Magistrate Judge's recommendation had long passed), an attorney, Mark A. Schwane, entered his appearance on Mr. Gabriel's behalf as a volunteer lawyer pursuant to the Court's Civil Pro Bono program. Although this order concludes the case, the Court notes its appreciation for Mr. Schwane's willingness to participate and hopes he will do so in appropriate future cases.

