

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Senior Judge Wiley Y. Daniel**

Civil Action No. 12-cv-02392-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN DOE 17,

Defendant.

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**ORDER**

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This matter is before the Court on Defendant John Doe No. 17's Motion to Sever and Dismiss filed December 1, 2012. This motion was referred to Magistrate Judge Hegarty for a recommendation. A Recommendation of United States Magistrate Judge was issued on February 12, 2013. See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Hegarty recommends therein that John Doe No. 17's Motion to Sever and Dismiss be denied, as Defendant failed to demonstrate why dismissal or severance is appropriate. (Recommendation at 1, 15.) He also advised that specific written objections were due within fourteen (14) days of service of the Recommendation in order to obtain reconsideration by the District Judge. (*Id.* at 1 n. 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. Magistrate Judge Hegarty conducted a thorough analysis of John Doe 17's challenge to joinder under Fed. R. Civ. P. 20(a)(2). (Recommendation at 8-15.) He properly found that dismissal is not the proper remedy for misjoinder. (*Id.* at 8.) He also found, and I agree, that John Doe 17 did not meet his burden of showing that severance is proper. I further note that since the filing of the Recommendation, all other Defendants have been dismissed from the case. Thus, there is no basis for a severance. Accordingly, I find that the Recommendation should be affirmed in its entirety. It is therefore

ORDERED that the Recommendation of United States Magistrate Judge filed on February 12, 2013 (ECF No. 67) is **AFFIRMED and ADOPTED**. In accordance therewith, it is

ORDERED that Defendant John Doe No 17's Motion to Sever and Dismiss filed on December 1, 2012 (ECF No. 48) is **DENIED**.

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<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).

Dated: April 11, 2013

BY THE COURT:

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