

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-03358-WYD-MEH

MALIBU MEDIA, LLC,

Plaintiff,

v.

JUSTIN WINKLER,

Defendant.

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

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THIS MATTER is before the Court on Plaintiff's Motion for Summary Judgment (ECF No. 50). In his Recommendation, Magistrate Judge Hegarty recommends that the pending motion be granted in part and denied in part. (Recommendation at 1, 19). 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 in part and denied in part for the reasons stated in both the Recommendation and this Order. Plaintiff has properly established no genuine issue of material fact that the Defendant copied 28 of the 39 films at issue in violation of the Copyright Act. However, Plaintiff has failed to establish no factual issues as to whether Defendant illegally copied the remaining 11 films.

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Hegarty (ECF No. 58) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 50) is **GRANTED IN PART** and **DENIED IN PART**.

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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: July 14, 2015

BY THE COURT:

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