

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

Civil Action No. 20-cv-00753-CMA-KLM

JANELLE N. CANODY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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**ORDER ADOPTING RECOMMENDATION OF UNITED STATES  
MAGISTRATE JUDGE KRISTEN L. MIX**

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This matter is before the Court on the February 8, 2021 Recommendation by United States Magistrate Judge Kristen L. Mix, wherein Judge Mix recommends that this Court grant Defendant's Motion to Dismiss Plaintiff's Complaint and dismiss Plaintiff's claims without prejudice (Doc. # 16). See (Doc. # 44 at 29). In her Recommendation, Judge Mix concluded that Plaintiff's negligence claims brought under the Federal Tort Claims Act ("FTCA") fall within the discretionary function exception of the FTCA and, therefore, the Court lacks subject matter jurisdiction over those claims. (*Id.* at 25.) Judge Mix further concluded that the United States is immune from tort liability in this case under the Colorado Recreational Use Statute ("CRUS") and, therefore, Plaintiff's Colorado Premises Liability Act claim is barred by the CRUS. See (*id.* at 25–28) (citing *Otteson v. United States*, 622 F.2d 516, 520 (10th Cir. 1980)).

(holding the Forest Service was entitled to protection under CRUS and affirming judgment in favor of the United States where “[t]he complaint on its face creates no issue of willful or malicious government conduct”). 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. (*Id.*) Despite this advisement, no objection to Judge Mix’s Recommendation has been filed by either party.

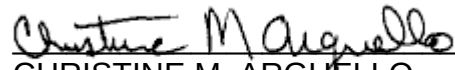
“[T]he district court is accorded considerable discretion with respect to the treatment of unchallenged magistrate reports. In the absence of timely objection, the district court may review a magistrate [judge’s] report under any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (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.”)).

After reviewing the Recommendation of Magistrate Judge Mix, in addition to applicable portions of the record and relevant legal authority, the Court is satisfied that the Recommendation is sound and not clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a). Accordingly, the Court ORDERS that the Recommendation of United States Magistrate Judge (Doc. # 44) is AFFIRMED and ADOPTED as an Order of this Court. It is

FURTHER ORDERED that Defendant's Motion to Dismiss Plaintiff's Complaint (Doc. # 16) is GRANTED, and Plaintiff's claims are hereby DISMISSED WITHOUT PREJUDICE. See *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006) (affirming dismissal without prejudice where a claim is dismissed for lack of subject matter jurisdiction). The Clerk of Court is directed to close this case.

DATED: March 2, 2021

BY THE COURT:

  
CHRISTINE M. ARGUELLO  
United States District Judge