

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION**

**DONALD DELONEY,** )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
**TRI-COUNTY METROPOLITAN** )  
**TRANSPORTATION DISTRICT OF** )  
**OREGON, STEPHEN BANTA, and** )  
**MICHAEL FORD,** )  
 )  
 Defendants. )  
\_\_\_\_\_ )

No. 3:11-cv-00977-ST

**OPINION AND ORDER ADOPTING  
FINDINGS AND RECOMMENDATION**

**SIMON, District Judge.**

Magistrate Judge Janice M. Stewart issued findings and recommendations in the above-captioned case on September 28, 2012. Dkt. 38. Judge Stewart recommended that the Motion to Dismiss, Dkt. 23, filed by Defendant Tri-County Metropolitan Transportation District of Oregon (“Tri-Met”) should be granted and that the claim against Tri-Met should be dismissed with prejudice. She also recommended that Plaintiff Donald Deloney’s Emergency Motion to Supplement, Dkt. 33, which she construed as a Motion to Amend the Complaint to Raise the Issue of Equitable Tolling, *see* Dkt. 35, should be denied as futile. No party has filed objections.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe a standard of review. In such cases, “[t]here is no indication that Congress . . . intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Stewart’s findings and recommendations for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Stewart’s findings and recommendations, Dkt. 38, are ADOPTED. Plaintiff’s Motion to Amend, *see* Dkt. 33 & Dkt. 35, is DENIED. Tri-Met’s Motion to Dismiss, Dkt. 23, is GRANTED. Plaintiff’s claim against Tri-Met is dismissed with prejudice.

Dated this 25th day of October, 2012.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge