

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JERRY SILVERSTEIN,

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Plaintiff,

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vs.

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CIVIL ACTION NO. 17-00012-KD-N

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WEATHER SHIELD MFG., INC.,

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Defendant.

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ORDER

This action is before the Court on the Report and Recommendation (doc. 59) and objections filed by defendant Weather Shield Manufacturing, Inc. (doc. 64).

After due and proper consideration of the issues raised, and a *de novo* determination of those portions of the recommendation to which objection is made, the Report and Recommendation (doc. 59) of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), and S.D. Ala. Gen. LR 72(a)(2)(S), is **ADOPTED** as the opinion of this Court.

Defendant objects to two factual determinations the Magistrate Judge recited in the Report and Recommendation. These facts are taken directly from the complaint. Defendant is reminded that under a Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted, the Court must construe the complaint in the light most favorable to the plaintiff and “*accept[] all well-pleaded facts that are alleged therein to be true.*” E.g., Miyahira v. Vitacost.com, Inc., 715 F.3d 1257, 1265 (11th Cir. 2013) (emphasis added).

Accordingly, the Magistrate Judge’s recommendation (doc. 59) that Defendant’s motion

to dismiss Count Five under Federal Rule of Civil Procedure 12(b)(6) be denied is **ADOPTED**
and the motion (doc. 36) is **DENIED**.

DONE and **ORDERED** this the 5th day of March 2018.

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
CHIEF UNITED STATES DISTRICT JUDGE