

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Robert E. Blackburn**

Civil Action No. 1:14-cv-00778-REB-MEH

UNITED STATES WELDING, INC.,

Plaintiff,

vs.

TECSYS, INC.,

Defendant.

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**ORDER OVERRULING OBJECTIONS TO AND ADOPTING  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

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**Blackburn, J.**

The matters before me are (1) **Defendant Tecsys, Inc.'s Renewed Motion to Dismiss Plaintiff's Complaint and Renewed Motion to Strike** [#32]<sup>1</sup> filed September 5, 2014; and (2) the corresponding **Recommendation of United States Magistrate Judge** [#47] filed December 1, 2014. The plaintiff filed objections [#54] to the recommendation, and the defendant filed a response [#60] to the objections. I overrule the objections and approve and adopt the recommendation.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed. I have considered carefully the recommendation, objections, and applicable case law. The recommendation is detailed

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<sup>1</sup> “[#32]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

and well reasoned. The objections of the plaintiff do not present a valid challenge to the reasoning and conclusions of the magistrate judge. I thus find and conclude that the arguments advanced, authorities cited, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

The plaintiff, United States Welding, Inc. (USW), purchased software from the defendant, Tecsys, Inc. The software was intended to serve many purposes in the operation of the business of USW. In the end, USW alleges, the Tecsys software did not function as promised by Tecsys and, in some ways, caused more problems than it solved. USW alleges eight claims against Tecsys: (1) fraudulent inducement; (2) negligent misrepresentation; (3) gross negligence; (4) willful misconduct; (5) breach of contract; (6) breach of express and implied warranty; (7) breach of the duty of good faith and fair dealing; and (8) breach of fiduciary duty. In its motion to dismiss, Tecsys challenges these claims on a variety of bases, as detailed in the recommendation. On certain claims, Tecsys has shown that the allegations in the complaint [#2] are not sufficient to state a claim against Tecsys. On all other issues raised by Tecsys in its motion, however, Tecsys is not entitled to dismissal.

**THEREFORE, IT IS ORDERED** as follows:

1. That the objections [#54] of the plaintiff are overruled;
2. That the **Recommendation of United States Magistrate Judge** [#47] filed December 1, 2014, is approved and adopted as an order of this court;
3. That under Fed. R. Civ. P. 12(b)(6), **Defendant Tecsys, Inc.’s Renewed Motion to Dismiss Plaintiff’s Complaint and Renewed Motion to Strike** [#32] filed

September 5, 2014, is granted as to the following claims asserted in the complaint [#2]:

- a. Claim Three in its entirety;
  - b. The portion of Claim Four which contains a claim for exemplary damages;
  - c. The portion of Claim Five alleging a breach of Section Ten of the License Agreement between the parties;
  - d. Claim Six, except that portion of Claim Six which alleges a breach of Section Ten of the License Agreement;
  - e. Claim Eight in its entirety;
  - f. The punitive damages claims asserted in Claims One, Two, Three, Four, and Eight; and
4. That otherwise, **Defendant Tecsys, Inc.'s Renewed Motion to Dismiss**

**Plaintiff's Complaint and Renewed Motion to Strike** [#32] filed September 5, 2014, is denied.

Dated September 3, 2015, at Denver, Colorado.

**BY THE COURT:**



Robert E. Blackburn  
United States District Judge