

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

AUG 31 2017

Clerk, U.S. District Court
District Of Montana
Billings

SCOTT LEE,

Plaintiff,

vs.

BNSF RAILWAY COMPANY, a
Delaware Corporation,

Defendant.

CV 17-09-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

Before the Court are United States Magistrate Judge Timothy Cavan's Findings and Recommendations filed on August 14, 2017. (Doc. 18). Judge Cavan recommends that this Court grant Lee's motion to remand in part, deny the motion in part, and deny BNSF's motion to dismiss. (*Id.*).

Pursuant to 28 U.S.C. § 636(b)(1), the parties were required to file written objections within 14 days of the filing of Judge Cavan's Findings and Recommendations. No objections were filed. When neither party objects, this Court reviews Judge Cavan's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d

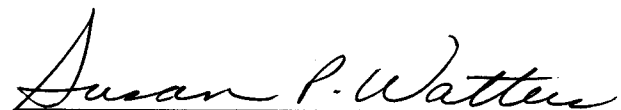
422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendations, this Court does not find that Judge Cavan committed clear error.

IT IS ORDERED that the proposed Findings and Recommendations entered by United States Magistrate Judge Cavan (Doc. 18) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that Lee's Motion to Remand (Doc. 9) is **GRANTED** as to the remand of Counts I-V, and **DENIED** as to costs and attorney's fees.

IT IS FURTHER ORDERED that BNSF's Motion to Dismiss (Doc. 3) is **DENIED** without prejudice as the Court does not have jurisdiction to consider it.

DATED this 21st day of August, 2017.



SUSAN P. WATTERS
United States District Judge