

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

SARAH WEST, AUSRA WEST,)	CV 10-132-M-DWM
and JAMES WEST,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	
STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY, and)	
JOHN DOES A, B, and C,)	
)	
Defendants.)	

Defendant, State Farm Mutual Automobile Insurance Company, filed three motions to dismiss. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation on June 28, 2011, and recommended:

(1) State Farm’s motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) (dkt # 25) be DENIED;

(2) State Farm’s motion to dismiss for failure to state a claim for relief under Fed. R. Civ. P. 12(b)(6) (dkt # 29) be GRANTED; and

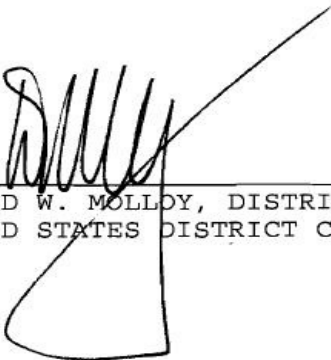
(3) State Farm’s motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) (dkt # 27) be DENIED as moot.

Plaintiffs did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation 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). I find no clear error with Judge Lynch’s factual findings, and upon de novo review, I agree with his legal conclusions.

IT IS HEREBY ORDERED that Judge Lynch’s Findings and Recommendation (dkt #73) are adopted in full. State Farm’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (dkt # 25) is DENIED, and State Farm’s Motion to Dismiss (dkt # 27) is DENIED as moot.

IT IS FURTHER ORDERED that State Farm’s Motion to Dismiss (dkt # 29) is GRANTED. This action is DISMISSED.

Dated this 20th day of July, 2011.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT