

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROY VAP and CON MUELLER,

Plaintiffs,

vs.

BIG IRON, INC.,

Defendant.

4:16-CV-3008

MEMORANDUM AND ORDER

This matter is before the Court on the Magistrate Judge's Findings and Recommendation (filing [21](#)) recommending that the Court grant in part and deny in part the defendant's partial motion to dismiss (filing [12](#)), and strike the portion of the plaintiffs' prayer for relief that requests recovery of FICA and FUTA contributions.

Neither party has objected to the Magistrate Judge's recommendation. [Title 28 U.S.C. § 636\(b\)\(1\)](#) provides for de novo review of a Magistrate Judge's findings or recommendations only when a party objects to them. *Peretz v. United States*, 501 U.S. 923 (1991). Failure to object to a finding of fact in a Magistrate Judge's recommendation may be construed as a waiver of the right to object from the district court's order adopting the recommendation of the finding of fact. [NECivR 72.2\(f\)](#). And the failure to file an objection eliminates not only the need for de novo review, but any review by the Court. *Thomas v. Arn*, 474 U.S. 140 (1985); *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609 (8th Cir. 2009); see also *United States v. Meyer*, 439 F.3d 855, 858-59 (8th Cir. 2006).

Accordingly, the Court will adopt the Magistrate Judge's recommendation that the defendant's motion to dismiss be denied in part and granted in part, and will strike the portion of the plaintiffs' prayer for relief that requests recovery of FICA and FUTA contributions.

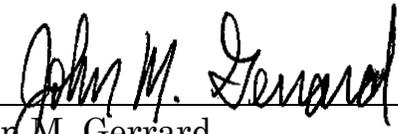
IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation (filing [21](#)) are adopted.
2. The defendant's partial motion to dismiss (filing [12](#)) is granted in part and denied in part.

3. The portion of the plaintiffs' prayer for relief that requests recovery of FICA and FUTA contributions is stricken.

Dated this 18th day of May, 2016.

BY THE COURT:

  
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John M. Gerrard  
United States District Judge