IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

CIVIL NO. 1:08CV274

PASQUALE RICCI and wife, KATHY RICCI,

Plaintiffs,

Vs.

SUPERIOR MOVING & STORAGE, INC.,

Defendant.

ORDER OF DISMISSAL

THIS MATTER is before the Court on the Magistrate Judge's

Memorandum and Recommendation, filed September 12, 2008.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of

Designation of this Court, United States Magistrate Judge Dennis L.

Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On September 12, 2008, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Defendant's motions to dismiss and for change of venue. The Plaintiffs, who are proceeding *pro se*, and counsel for the Defendant were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 10 days of service of the Recommendation; the period within which to file objections expired on September 29, 2008. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant's motion to dismiss be allowed and the Plaintiffs' action dismissed with prejudice.

IT IS, THEREFORE, ORDERED that the Defendant's motion to dismiss is ALLOWED, and Plaintiffs' claims are hereby DISMISSED WITH PREJUDICE as preempted by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706.

IT IS FURTHER ORDERED that the Defendant's motion to change venue is **DENIED** as moot.

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Signed: October 7, 2008

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Lacy H. Thornburg United States District Judge