

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PENDLETON DIVISION

IVAN B. LANGLEY and KARLEE E. LANGLEY,  
Plaintiffs,  
v.  
SHRILY E. JONES and CHARLEE A. PHILLIPS, JR.,  
Defendants.

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No. 2:11-CV-00774-PK

**ORDER ADOPTING FINDINGS AND RECOMMENDATION**

**SIMON, District Judge.**

On May 18, 2012, Magistrate Judge Paul Papak issued Findings and Recommendation (#58) in the above-captioned case. Judge Papak recommended that Plaintiffs' first motion for leave to amend their pleading (#51) be denied on grounds of futility and that their second motion for leave to amend (#56) be denied as moot because it appears to be identical to their first-filed motion. Judge Papak also recommended, however, that Plaintiffs be granted an additional period of thirty days within which to amend their complaint to allege facts sufficient to cure the jurisdictional infirmities identified by Judge Papak. Neither party has filed objections to Judge Papak's Findings and Recommendation.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3). If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act], intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* the magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Federal Rule of Civil Procedure 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this court follows the recommendation of the Advisory Committee and reviews Judge Papak’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Papak’s Findings and Recommendation (#58) is ADOPTED. Plaintiffs’ Motion for Leave to File Amended Complaint/Petition (#51) is DENIED. Plaintiffs’ Motion for Leave to File Second Amended Complaint (#56) is also DENIED as moot. Plaintiffs have thirty days from the date of this order

to amend their complaint to allege facts sufficient to cure the jurisdictional infirmities identified by Judge Papak in his Findings and Recommendation (#58) and in his prior Findings and Recommendation (#31).

Dated this 5<sup>th</sup> day of June, 2012.



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Michael H. Simon  
United States District Judge