UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON PORTLAND DIVISION

WILLIAM SIZER, SAMUEL McCORMICK, and SHAWNA DAVIS,

Plaintiff,

Civil No. 10-553-PK ORDER

NEW ENGLAND FINANCIAL, a service mark/agent of NEW ENGLAND LIFE INSURANCE COMPANY, a corporation, METROPOLITAN LIFE INSURANCE CO., a Delaware corporation, MICHELLE WARNES, an individual, and MARCUS JOHNSON, an individual,

Defendants.

HAGGERTY, District Judge:

Magistrate Judge Papak issued a Findings and Recommendation [24] in this action that recommended finding that co-defendant Marcus Johnson was fraudulently joined to support an anticipated motion to remand, and that the Motion to Dismiss [5] advanced by defendants New

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England Life Insurance Company, Metropolitan Life Insurance Co., and Michelle Warnes should

be granted by dismissing plaintiffs' second claim for relief as to co-defendant Johnson.

No objections to the Findings and Recommendation were filed, and the matter is now

before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

When no timely objection is filed, the court need only satisfy itself that there is no clear error on

the face of the record in order to accept the recommendation of the Magistrate Judge. Campbell

v. United States Dist. Ct., 501 F.2d 196 (9th Cir. 1974).

No clear error appears on the face of the record. This court adopts the Findings and

Recommendation in its entirety.

CONCLUSION

For the foregoing reasons, the court adopts the Findings and Recommendation [24]. This

court concludes that co-defendant Marcus Johnson was fraudulently joined to support an

anticipated motion to remand from plaintiffs.

The Motion to Dismiss [5] advanced by defendants New England Life Insurance

Company, Metropolitan Life Insurance Co., and Michelle Warnes is granted: plaintiffs' second

claim for relief as to co-defendant Johnson is dismissed without prejudice.

IT IS SO ORDERED.

DATED this <u>8</u> day of December, 2010.

/s/ Ancer L. Haggerty

Ancer L. Haggerty

United States District Judge

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