

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

**ROBERT METCALF,**

Plaintiff,

v.

**BLUE CROSS BLUE SHIELD OF  
MICHIGAN, DAIMLER-CHRYSLER  
NORTH AMERICA, and DAIMLER  
TRUCK N.A. LLC UAW HEALTH  
BENEFITS PLAN,**

Defendants.

No. 3:11-CV-1305-ST

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATION**

**SIMON, District Judge.**

On April 20, 2012, Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#21) in the above-captioned case. Judge Stewart recommended that this court deny the Motion to Dismiss (#11) submitted by Defendants Blue Cross Blue Shield of Michigan, Daimler Trucks North America, and Daimler Truck N.A. LLC UAW Health Benefits Plan. Neither party has filed objections to Judge Stewart’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*), *cert. denied*, 540 U.S. 900 (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 Stewart’s Findings and Recommendation (#21) for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Stewart’s findings and recommendation (#21) is ADOPTED. The Motion to Dismiss (#11) is DENIED.

Dated this 4<sup>th</sup> day of June, 2012.

  
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Michael H. Simon  
United States District Judge