

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**FAMERS INSURANCE EXCHANGE,
MID-CENTURY INSURANCE
COMPANY, TRUCK INSURANCE
EXCHANGE, COAST NATIONAL
INSURANCE COMPANY, 21ST
CENTURY CENTENNIAL INSURANCE
COMPANY, FARMERS INSURANCE
COMPANY OF WASHINGTON,
FARMERS INSURANCE COMPANY OF
OREGON, 21ST CENTURY PACIFIC
INSURANCE COMPANY, and 21ST
CENTURY INSURANCE COMPANY,**

Plaintiffs,

v.

**FIRST CHOICE CHIROPRACTIC &
REHABILITATION, SUNITA BHASIN,
DAVID PETROFF, KELLY COLEY,
DAVID AVOLIO, JOEL INGERSOLL,
SEAN ROBINS, PARDIS TAJIPOUR,
MARCUS COOL, AARON DAVISON, and
AJAY MOHABEER,**

Defendants.

Case No. 3:13-cv-01883-PK

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Paul Papak issued Findings and Recommendation in this case on May 21, 2014. Dkt. 41. Judge Papak recommended that the Court: (1) grant in part and deny in part defendants First Choice Chiropractic & Rehabilitation (“First Choice”), Dr. Sunita Bhasin, Kelly Coley, David Petroff, and Dr. Pardis Tajipour’s motion to dismiss and motion to strike (Dkt. 19); (2) grant in part and deny in part defendant Dr. Marcus Cool’s motion to dismiss and motion to strike (Dkt. 22); (3) grant in part and deny in part defendants Dr. Aaron Davidson, Dr. Joel Ingersoll, and Dr. Sean Robins’s motion to dismiss and motion to strike (Dkt. 28); and (4) grant in part and deny in part Dr. Ajay Mohabeer’s motion to dismiss and motion to strike (Dkt. 34). Judge Papak further recommended that the Court dismiss without prejudice and with leave to amend the first amended complaint (“FAC”) to the extent it seeks \$2,096,926 in damages relating to third-party claims (Dkt. 10).

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate’s findings and recommendation, “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).

Defendants timely filed an objection. Dkt. 47. Defendants argue that the plaintiffs in this action, a group of insurance companies (collectively “Farmers” or “Plaintiffs”), allege claims in their FAC that are implausible and do not pass muster under Rule 8 and Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants further argue that all of Farmers’ claims should be dismissed for failure to plead fraud with the specificity required by Rule 9(b) of the Federal Rules of Civil Procedure. Finally, Defendants argue that all of Farmers’ claims are partially time-

barred. The Court has reviewed de novo those portions of Judge Papak's Findings and Recommendation to which Defendants have objected, as well as Defendants' objections and Plaintiffs' response. The Court agrees with the entirety of Judge Papak's reasoning and ADOPTS those portions of the Findings and Recommendation.

For those portions of a magistrate's findings and recommendation to which neither party has objected, the Act does not prescribe any standard of review. See *Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (the court must review de novo magistrate's findings and recommendation 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 Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate's recommendation for "clear error on the face of the record."

For those portions of Judge Papak's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Papak's Findings and Recommendation (Dkt. 41). The Court grants in part and denies in part defendants First Choice, Dr. Bhasin, Kelly Coley, David Petroff, and Dr. Tajipour's motion to dismiss and motion to strike (Dkt. 19), grants in part and denies in part defendant Dr. Cool's motion to dismiss and motion to strike (Dkt. 22), grants in part and denies in part defendants Dr. Davidson, Dr. Ingersoll, and Dr. Robins's motion to dismiss and

motion to strike (Dkt. 28), and grants in part and denies in part Dr. Mohabeer's motion to dismiss and motion to strike (Dkt. 34). The Court dismisses without prejudice and with leave to amend Plaintiffs' FAC to the extent it seeks \$2,096,926 in damages relating to third-party claims (Dkt. 10).

IT IS SO ORDERED.

DATED this 18th day of July, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge