

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KEVIN MURPHY, individually and on
behalf of all other similarly situated,

Plaintiff,

v.

PRECISION CASTPARTS
CORPORATION, MARK DONEGAN, and
SHAWN R. HAGEL,

Defendants.

Case No. 3:16-cv-00521-SB

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Stacie F. Beckerman issued Findings and Recommendation in this case on June 27, 2017. ECF 75. Judge Beckerman recommended that Defendants' Motion to Dismiss (ECF 66) be denied.

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). 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).

Defendants timely filed an objection. ECF 79. Defendants argue that Judge Beckerman incorrectly found that Plaintiff adequately alleges falsity and scienter. The Court has reviewed de novo those portions of Judge Beckerman's Findings and Recommendation to which Defendants have objected, as well as Defendants' objections and Plaintiff's response. The Court agrees with Judge Beckerman's reasoning regarding falsity and scienter and ADOPTS those portions of the Findings and Recommendation.

Defendants also filed a declaration by Brad S. Daniels with several exhibits attached. ECF 80. Defendants, however, offer no explanation for why their new evidence was not raised before Judge Beckerman, and the Court exercises its discretion not to consider the supplemental declaration.

For those portions of a magistrate's findings and recommendations 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 to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo 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 Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate's recommendations for "clear error on the face of the record."

For those portions of Judge Beckerman'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 Beckerman's Findings and Recommendation, ECF 75. Defendants' Motion to Dismiss (ECF 66) is **DENIED**.

IT IS SO ORDERED.

DATED this 22nd day of August, 2017.

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