

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

TIMOTHY C. ROTE,

Plaintiff,

v.

**LOT SOLUTIONS, INC., and DOES 1
THROUGH 5,**

Defendants.

Case No. 3:16-cv-1434-PK

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Paul Papak issued Findings and Recommendation in this case on March 3, 2017. ECF 24. Judge Papak recommended that Defendant Lot Solutions, Inc.'s motion to dismiss should be granted in part, Plaintiff's claim should be dismissed without prejudice, Plaintiff should be given thirty days to cure the deficiencies in his Complaint identified by Judge Papak, and Defendant's alternative motion to transfer venue should be denied. No party has filed objections.

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).

If no party objects, 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 review is not required in the absence of objections, the 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 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. Accordingly, the Court **ADOPTS** Judge Papak’s Findings and Recommendation, ECF 24. Defendant’s motion to dismiss (ECF 20) under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim is granted, Defendant’s motion to dismiss under Rule 12(b)(7) for failure to join a necessary party is denied without prejudice, and Defendant’s alternative motion to transfer venue is denied. Plaintiff’s Complaint is dismissed

without prejudice. If Plaintiff can cure the deficiencies identified by Judge Papak in his Findings and Recommendation, Plaintiff may file an amended complaint within thirty days from the date of this Order. If Plaintiff does not file an amended complaint, the Court shall enter a Judgment dismissing this case without prejudice.

IT IS SO ORDERED.

DATED this 27th day of March, 2017.

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