

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

TIMOTHY C. ROTE,

Plaintiff,

v.

**LEAPFROG ONLINE CUSTOMER
ACQUISITION, LLC, and DOES 1
THROUGH 5,**

Defendants.

Case No. 3:16-cv-1435-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 19. Judge Papak recommended that Defendant Leapfrog Online Customer Acquisition, LLC's motion to dismiss for lack of subject matter jurisdiction be granted. Judge Papak further recommended that a final judgment be issued in this case because this Court does not have jurisdiction, but that Plaintiff's complaint be dismissed without prejudice to Plaintiff's ability to file his claims in state court. 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

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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 19. Defendant’s motion to dismiss (ECF 12) under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction is granted. Plaintiff’s Complaint is dismissed without prejudice.

IT IS SO ORDERED.

DATED this 27th day of March, 2017.

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