

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

**DAVE'S KILLER BREAD, INC., an
Oregon corporation; and FLOWERS
FOODS, INC., a Georgia corporation,**

Plaintiffs,

v.

**MONTANA MERCHANDISING, INC.
d/b/a MONTANA MILLING, INC., a
Montana corporation,**

Defendant.

Case No. 3:17-cv-0237-YY

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Youlee Yim You issued Findings and Recommendation in this case on June 23, 2017. ECF 64. Judge You recommended that Defendant's motion to dismiss for improper venue be granted and Defendant's alternative motions be denied as moot. Judge You found that because the District of Montana declined to apply the "first-to-file" rule and retained jurisdiction over a case involving these parties, among others, with claims arising out of the same facts, the Court should dismiss this case and Plaintiffs can file their claims as counterclaims in the case pending before the District of Montana. 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 You’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge You’s Findings and Recommendation, ECF 64. Defendant’s motion to dismiss (ECF 18) is GRANTED. Defendant’s alternative motions are denied as moot.

IT IS SO ORDERED.

DATED this 12th day of July, 2017.

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