

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**ECLIPSE CONSULTING, INC.,**

Plaintiff,

v.

**BDO USA, LLP,**

Defendant.

No. 3:17-cv-826-AC

OPINION AND ORDER

**MOSMAN, J.,**

On January 8, 2018, Magistrate Judge John Acosta issued his Findings and Recommendation (“F&R”) [26], recommending that BDO USA’s Motion to Dismiss [13] should be GRANTED and the Petition to Compel Arbitration [1] should be dismissed without leave to amend. Eclipse Consulting objected [31], and BDO USA responded [37].

**LEGAL STANDARD**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of

the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

### CONCLUSION

I ADOPT IN PART. I ADOPT the F&R except as to the dismissal without leave to amend. Eclipse now raises, in its objections, issues regarding the recommendation to dismiss with prejudice that it did not raise with Judge Acosta. Those objections shed new light on the possibility that it could successfully amend its complaint. I find that Eclipse Consulting could allege facts, consistent with its pleading, that could cure the identified deficiencies. *See Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Accordingly, BDO USA's Motion to Dismiss [13] is GRANTED and Eclipse's Petition to Compel Arbitration [1] is dismissed with leave to amend. Eclipse has 14 days to amend.

IT IS SO ORDERED.

DATED this 30<sup>th</sup> day of March, 2018.

*/s/Michael W. Mosman*

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MICHAEL W. MOSMAN  
Chief United States District Judge