

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CAROL FERGUSON and **LYNDA FREEMAN**, on behalf of themselves and, in addition, on behalf of other similarly situated,

Plaintiffs,

v.

MARIA SMITH, an individual; **ALL STAR AUTO GROUP, INC.**, a Delaware corporation; **the SMITH AUTO GROUP**, an unregistered conglomeration of entities owned by Maria Smith; **GLADSTONE AUTO, LLC**, an Oregon limited liability company; and **CARROS, INC.**, an Oregon corporation,

Defendants.

Case No. 3:18-cv-0372-SB

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Stacie F. Beckerman issued Findings and Recommendation in this case on July 18, 2018. ECF 17. Judge Beckerman recommended that Defendants' motion to dismiss be granted in part. 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 judge'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],

PAGE 1 – ORDER

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 judge'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 judge'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 Beckerman's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Beckerman's Findings and Recommendation, ECF 17. Defendants' Motion to Dismiss (ECF 6) is **GRANTED IN PART** and **DENIED IN PART**. Plaintiffs' FLSA claims and state law claims for alleged violations of Oregon Revised Statutes chapter 653 are dismissed without prejudice and with leave to amend. The motion to dismiss based on personal jurisdiction is denied with respect to Defendant Maria Smith and granted with respect to Defendants All Star Autogroup, Inc. and Smith Autogroup. Those defendants are dismissed without prejudice.

IT IS SO ORDERED.

DATED this 6th day of August, 2018.

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