

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

DTL BUILDERS, INC., a Utah corporation, and
THE CINCINNATI INSURANCE COMPANY,
and an Ohio surety,

Case No. 6:17-cv-01592-JR
6:17-cv-01251-JR
ORDER

Plaintiffs,

vs.

RI KY ROOFING & SHEET METAL, LLC,
Oregon limited liability company,

Defendant.


AIKEN, Judge:

Magistrate Judge Russo filed her Findings and Recommendation ("F&R") (doc. 20) on February 7, 2018. The matter is now before me. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72. Judge Russo recommended dismissing defendant DTL Builders' ("DTL") claim for breach of the duty of good faith and fair dealing. DTL filed objections to the F&R on a single ground: it argues that Judge Russo's recommendation is moot because DTL has filed for leave to amend the good faith and fair dealing claim. The recommendation is not moot because Judge Russo has not granted DTL's motion for leave to amend and has stayed consideration of that motion pending my ruling on the F&R.

Although DTL's decision not to object to Judge Russo's F&R on the merits relieves me of my obligation to perform a *de novo* review, I retain the obligation to "make an informed, final determination." *Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983), *overruled on other grounds*, *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003) (en banc). The Magistrates Act does not specify a standard of review in cases in which no merits objections are filed. *Ray v. Astrue*, 2012 WL 1598239, *1 (D. Or. May 7, 2012). Following the recommendation of the Rules Advisory Committee, I review the F&R for "clear error on the face of the record[.]" Fed. R. Civ. P. 72 advisory committee's note (1983) (citing *Campbell v. United States District Court*, 501 F.2d 196, 206 (9th Cir. 1974)); *see also United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) (stating that, "[i]n the absence of a clear legislative mandate, the Advisory Committee Notes provide a reliable source of insight into the meaning of" a federal rule). Having reviewed the file of this case, I find no clear error.

THEREFORE, IT IS HEREBY ORDERED that I adopt Judge Russo's F&R (doc. 20).

Dated this 20th day of March 2018.



Ann Aiken
United States District Judge