

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF TEXAS**

CHASE BANK USA, N.A.,

Plaintiff,

v.

BRIAN K. MCLAIN  
*d/b/a Vacuum City,*

Defendant.

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CIVIL ACTION NO. 1:12-CV-353

**ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for all pretrial matters pursuant to an Order of Reference entered on August 6, 2012. The Court has received and considered the report (Doc. No. 11) of the magistrate judge, who recommends that the Court deny Defendant Brian K. McLain’s “Motion to Dismiss” (Doc. No. 9). On February 8, 2013, McLain filed what he describes as final proof of unfair business practices and fraud and motion to dismiss. (Doc. No. 13.) The Court construes this filing as objections to the magistrate judge’s report and recommendation. The Plaintiff has not filed a response to McLain’s filing.

A party who files timely written objections to a magistrate judge’s report and recommendation is entitled to a de novo determination of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(c) (Supp. IV 2011); FED. R. CIV. P. 72(b)(2)–(3). “Parties filing objections must specifically identify those findings [to which they object]. Frivolous, conclusive or general objections need not be considered by the district court.” *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (en banc), *overruled on*

*other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). In McLain's filing, he does not identify any specific issue of law or fact, among those set forth in the magistrate judge's report and recommendation, with which he disagrees. Therefore, McLain's objection fails to invoke his right to a de novo review of the report and recommendation. Nonetheless, the Court has undertaken a de novo review of the report and recommendation, and the Court concludes that the magistrate judge's findings and conclusions are correct. *See Douglass*, 79 F.3d at 1429 (noting that a district court may alternatively find the magistrate judge's findings and conclusions were correct even though a party did not properly object to the report and recommendation).

McLain's objection (Doc. No. 13) is **OVERRULED**; the magistrate judge's report and recommendation (Doc. No. 11) is **ADOPTED**; and McLain's "Motion to Dismiss" (Doc. No. 9) is **DENIED**.

SIGNED at Beaumont, Texas, this 26th day of February, 2013.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE