

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

PETER DAVID WINEGARNER	§	
	§	
V.	§	CASE NO. 4:09CV627
	§	Judge Schneider/Judge Mazzant
CINEMARK HOLDINGS, INC., ET AL.	§	

## MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On October 27, 2010, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that the City of Lewisville, Texas, City of Lewisville Police Department, City of Lewisville Police Chief Russ Kerbow, City of Lewisville City Manager Claude King, and City of Lewisville Police Detective Ryan Maly's Motion to Dismiss Per Federal Rule of Civil Procedure 12(b)(5) and/or Rule 12(b)(6) (Dkt. #62) should be GRANTED.

The Court, having made a *de novo* review of the objections raised by Plaintiff, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court.

It is, therefore, **ORDERED** that the City of Lewisville, Texas, City of Lewisville Police Department, City of Lewisville Police Chief Russ Kerbow, City of Lewisville City Manager Claude King, and City of Lewisville Police Detective Ryan Maly's Motion to Dismiss Per Federal Rule of Civil Procedure 12(b)(5) and/or Rule 12(b)(6) (Dkt. #62) is **GRANTED**.

It is further **ORDERED** that Plaintiff's case against the City of Lewisville, Texas, City of Lewisville Police Department, City of Lewisville Police Chief Russ Kerbow, City of Lewisville City Manager Claude King, and City of Lewisville Police Detective Ryan Maly should be **DISMISSED** with prejudice.

**It is SO ORDERED.**

**SIGNED this 4th day of January, 2011.**

A handwritten signature in black ink, reading "Michael H. Schneider". The signature is written in a cursive style with a large initial "M".

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MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE