

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**JAMES FRANKLIN and wife,
MELISSA FRANKLIN
Plaintiffs,**

VS.

**PNC BANK NATIONAL ASSOCIATION
d/b/a PNC MORTGAGE and FEDERAL
HOME LOAN MORTGAGE
CORPORATION
Defendants.**

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Case No. 4:11CV572

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

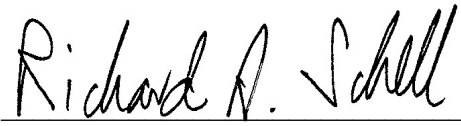
Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On August 31, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant PNC Bank, N.A.'s Rule 12(b)(6) Motion to Dismiss First Amended Complaint (Dkt. 15) be GRANTED as to Plaintiffs' claims of breach of contract based on waiver, anticipatory breach, breach of duty of good faith and fair dealing and breach of oral loan modification and DENIED as to all other claims.

The court has made a *de novo* review of the objections raised by Plaintiffs and is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendant PNC Bank, N.A.'s Rule 12(b)(6) Motion to Dismiss First Amended Complaint (Dkt. 15) is GRANTED as to Plaintiffs' claims of breach of contract based on waiver, anticipatory breach, breach of duty of good faith and fair dealing and breach of oral loan modification and DENIED as to all other claims.

IT IS SO ORDERED.

SIGNED this the 28th day of September, 2012.

Handwritten signature of Richard A. Schell in black ink.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE