

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

PADRE NTERPRISES, INC.

Plaintiff,

VS.

**HUGH GARY RHEA d/b/a
RMP CROP INSURANCE**

Defendant.

§
§
§
§
§
§
§
§
§
§

Case No. 4:11CV674

**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 January 31, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Plaintiffs' Third Motion to Dismiss Defendant's Second Amended Counterclaim for Failure to State a Claim (Dkt. 63) be DENIED as to Defendant's breach of contract counterclaim, DENIED as to Defendant's fraud counterclaim based on Newhouse's assurance that he had both federal and state licenses and Newhouse's representation that he would give up his part time employment to recruit farmers, GRANTED as to any other fraud counterclaim asserted, and GRANTED as to Defendant's breach of loyalty claim, and that Defendant's Motion for Dismissal of Plaintiff's Second Amended Complaint for Failure to State a Claim (Dkt. 65) be DENIED in its entirety.

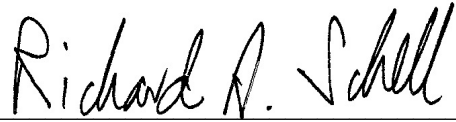
The court has made a *de novo* review of the objections raised by Defendant, as well as Plaintiffs' response, and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Defendant's objections are without merit as to the ultimate findings of the Magistrate

Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Plaintiffs' Third Motion to Dismiss Defendant's Second Amended Counterclaim for Failure to State a Claim (Dkt. 63) is DENIED as to Defendant's breach of contract counterclaim, DENIED as to Defendant's fraud counterclaim based on Newhouse's assurance that he had both federal and state licenses and Newhouse's representation that he would give up his part time employment to recruit farmers, GRANTED as to any other fraud counterclaim asserted, and GRANTED as to Defendant's breach of loyalty claim, and Defendant's Motion for Dismissal of Plaintiff's Second Amended Complaint for Failure to State a Claim (Dkt. 65) is DENIED in its entirety.

IT IS SO ORDERED.

SIGNED this the 18th day of March, 2013.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE