

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JANIS LOWE, *et al.*,

Plaintiffs,

v.

ELTAN, B.V., *et al.*,

Defendants.

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CIVIL ACTION NO. 9:05-CV-38

ORDER PARTIALLY ADOPTING MAGISTRATE JUDGE’S
RECOMMENDATION AND OF PARTIAL DISMISSAL

The Court referred this matter to United States Magistrate Judge Keith F. Giblin for consideration and recommended disposition of case-dispositive pretrial motions. On February 21, 2013, Judge Giblin issued a report and recommendation on the defendants’ pending motions to dismiss. Judge Giblin recommended that the Court grant the motions to dismiss and dismiss all plaintiffs’ claims against the defendants, without prejudice. In support, Judge Giblin found that the plaintiffs are legally precluded from pursuing a shareholder’s derivative suit *pro se*. *See Report and Recommendation* [Doc. #195].

After Judge Giblin issued his report, eighteen (18) of the formerly *pro se* plaintiffs retained counsel. *See Notices of Appearance* [Doc. #198, Doc. #203]. Those plaintiffs also objected to the magistrate judge’s report on the grounds that the factual basis upon which the magistrate judge based his recommendation no longer constitutes a valid reason to deny the plaintiffs “their day in court.” *See Objections* [Doc. #201]. The represented plaintiffs have also requested leave to amend their pleading and for the entry of a scheduling order, which the defendants have opposed. Eight (8) of

the remaining plaintiffs, however, are still *pro se*. Those *pro se* plaintiffs have not filed objections to the report and recommendation.

Pursuant to the plaintiffs' objections and in accordance with 28 U.S.C. § 636(b)(1), the Court conducted a *de novo* review of the magistrate judge's findings, the record, the specific objections, and the applicable law in this proceeding. The Court has also considered the recent developments in the case. After review, the Court finds that Judge Giblin's findings should be accepted in part. The Court therefore **ORDERS** as follows:

Judge Giblin's Report and Recommendation [Doc. #195] on the pending motions to dismiss is **ADOPTED**, in part, as to the magistrate judge's recommendation that the claims of the *pro se* plaintiffs must be dismissed. The represented plaintiffs' *Objections* [Doc. #201] are sustained at this time. The Court accordingly declines to adopt the magistrate judge's recommendation of dismissal as to those plaintiffs.

The Court further **ORDERS** that the pending motions to dismiss [Doc. #s 137, #141, #149, #182, #183] are **GRANTED** in part, and **DENIED** in part, without prejudice to reassert. The motions are granted regarding the claims asserted by the remaining *pro se* plaintiffs, but denied as to the plaintiffs who have since retained counsel. The motions to dismiss are denied without prejudice to reassert the arguments stated therein after the Court has ruled on the plaintiffs' pending motion for leave to amend and for entry of a scheduling order.

The Court further **ORDERS** that the claims asserted by the following *pro se* plaintiffs are dismissed in their entirety, without prejudice:

Rainee Busby, Aline Dickey, Robert Haugen, Gina Long, Pete Murphy, Kajal Roy, Wyndy Sheets, and Aparna Cherukupalli.

Those *pro se* plaintiffs are **DISMISSED** and the Clerk is directed to terminate them as active parties. All other pending causes of action asserted by the remaining plaintiffs are still active at this time, pending further order by the Court.

So **ORDERED** and **SIGNED** this **22** day of **March, 2013**.

A handwritten signature in black ink, appearing to read "Ron Clark". The signature is written in a cursive, slightly slanted style.

Ron Clark, United States District Judge