

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

MILTON JOHNSON,  
Cross-claimant,

v.

BRYAN F. RUSS, JR. et al.,  
Cross-defendants.

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6:16-cv-284 RP

**ORDER**

Before the Court is Defendants’ Motion to Dismiss for Failure to State a Claim (Dkt. 9). The case was referred to United States Magistrate Judge Jeffrey C. Manske for a Report and Recommendation on the merits pursuant to 28 U.S.C. § 636(b), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, as amended. Magistrate Judge Manske filed his initial Report and Recommendation on November 1, 2016. (Dkt. 16). In response to the Magistrate’s Report and Recommendation, Plaintiff filed a Third Amended Complaint. (Dkt. 17, Ex. 1). Reviewing the existing Motion to Dismiss in light of the Third Amended Complaint, the Magistrate entered a second Report and Recommendation on Defendants’ Motion to Dismiss on December 7, 2016, incorporating the conclusions of his previous Report and Recommendation with respect to Defendant Russ (Dkt. 19).

Pursuant to 28 U.S.C. § 636(b) and Rule 72(b) of the Federal Rules of Civil Procedure, a party may serve and file specific, written objections to the proposed findings and recommendations of the Magistrate Judge within fourteen days after being served with a copy of the Report and Recommendation, and thereby secure a de novo review by the district court. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation in a

Report and Recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

All parties were properly notified of the consequences of a failure to file objections. To date, none of the parties have filed objections to the findings of fact and conclusions of law in the Report and Recommendation. The Court, having reviewed the entire record and finding no plain error, accepts and adopts the Report and Recommendation of the magistrate judge for substantially the reasons stated therein.

Accordingly, the Court **ORDERS** that the second Report and Recommendation of the United States Magistrate Judge (Dkt. 19), is **APPROVED AND ACCEPTED**. The Court also **ORDERS** that the initial Report and Recommendation of the United States Magistrate Judge (Dkt. 16), is **APPROVED AND ACCEPTED** to the extent it is referenced and incorporated into the Magistrate's second Report and Recommendation.

The Court **ORDERS** that Defendants' Motion to Dismiss (Dkt. 9) is **GRANTED** as to Plaintiff's claims against Defendant Palmos, Russ, McCullough & Russ, LLP and **DENIED** as to Plaintiff's claims against Defendant Russ.

**SIGNED** on January 10, 2017.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE