

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

DOUGLAS MCKISSICK,

Plaintiff,

v.

Case No: 2:20-cv-801-SPC-MRM

MARKS CABINETRY
SERVICES, INC.,

Defendant.

_____ /

OPINION AND ORDER¹

Before the Court is United States Magistrate Judge Mac R. McCoy's Report and Recommendation. ([Doc. 41](#)). Judge McCoy recommends denying the parties' joint motion for approval of settlement without prejudice and giving the parties an opportunity to file a renewed motion to approve the settlement to address the deficiencies identified in the Report and Recommendation. Neither party objects to the Report and Recommendation, and the time to do so has expired.

A district judge "may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge." [28 U.S.C.](#)

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

§ 636(b)(1). The judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* And “[t]he judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

After examining the file independently and upon considering Judge McCoy’s findings and recommendations, the Court accepts and adopts the Report and Recommendation.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation (Doc. 41) is **DENIED without prejudice.**
2. The Joint Motion for Approval of Settlement and Motion to Dismiss the Case with Prejudice (Doc. 37) is **DENIED without prejudice.**
3. The parties shall file a renewed motion to approve the settlements to address the issues identified in the Report and Recommendation by **August 5, 2021**. Alternatively, the parties may file a notice of their intent to proceed under the operative Case Management and Scheduling Order (Doc. 39).
4. Given the settlement, the parties are reminded they may consent to the assigned Magistrate Judge conducting “any or all proceedings,” including review of the settlement and entry of final judgment. *See*

28 U.S.C. § 636(c)(1). Of course, the parties “are free to withhold consent without adverse substantive consequence.” *Id.* at § 636(c)(2).

At this time, the parties have not consented. So on or before **August 5, 2021**, the parties are **DIRECTED** to file either one of two documents: (1) a completed copy of the consent form attached to the FLSA Scheduling Order ([Doc. 10 at 9](#)) OR (2) a joint notice simply stating they do not consent to the assigned Magistrate Judge.

DONE and **ORDERED** in Fort Myers, Florida on July 16, 2021.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record