

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MICHAEL P. O'BANION and
PATRICIA R. BRADLEY,

Plaintiffs,

v.

SELECT PORTFOLIO SERVICES,
INC., LITTON LOAN SERVICING LP;
JUST LAW, INC.; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; DISCOVER
LENDING GROUP; OWNIT
MORTGAGE SOLUTIONS, INC.,

Defendants.

Case No. 1:09-CV-00249-EJL

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

On July 16, 2012, Chief United States Magistrate Judge Candy W. Dale issued a Report and Recommendation (“the Report”), recommending that Plaintiffs’ Motions to Dismiss be granted and the Motion for Summary Judgment be deemed moot. (Dkt. 190.)¹ Any party may challenge a Magistrate Judge’s proposed recommendation regarding by filing written objections within ten days after being served with a copy of the magistrate’s Report

¹ The Report and Recommendation also contained an Order ruling on several other Motions. (Dkt. 190.)

and Recommendation. 28 U.S.C. § 636(b)(1). The district court must then “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* The district court may accept, reject, or modify in whole or in part, the findings and recommendations made by the magistrate. *Id.*; *see also* Fed. R. Civ. P. 72(b). Plaintiffs filed objections to the Report and Recommendation to which the Defendants have responded. (Dkt. 197, 198, 200.) The Court has considered the Plaintiffs’ contentions and conducted a *de novo* review of the record and finds as follows.

Discussion

Plaintiffs object to the Report generally challenging 1) the dismissal of Defendant Ownit, 2) the denial of their Motion to Compel and Motion to Overrule Objections, 3) the sanctions imposed, and 4) the ruling concerning the requests for admissions. Defendants Lipton Loan Servicing LP, Select Portfolio Services, Inc., and Mortgage Electronic Registration Systems, Inc. have responded to the objections and maintain the Report properly resolved the matters before it. (Dkt. 198, 200.)

The only objection to the Report’s recommendation is as to the Motion to Dismiss Defendant Ownit. The remaining objections go to matters over which Magistrate Judge Dale had jurisdiction and properly issued an Order. *See* 28 U.S.C. § 636(b)(1). Regardless, this Court has considered the Plaintiffs objections to the matters complained of and does not find Magistrate Judge Dale’s Order to be “clearly erroneous or contrary to law.” *See* 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a) (A district court may set aside a magistrate judge’s order on appeal if it finds the order to be “clearly erroneous or

contrary to law.”). Just the opposite, this Court wholeheartedly agrees with Magistrate Judge Dale’s rulings in her Order and affirms the same.

As to the objection challenging the recommendation that the Motion to Dismiss Ownit Mortgage Solutions Inc. be granted, the Court finds the objection to be without merit. Plaintiffs object to the “Immediate Dismissal” of Ownit complaining of prejudice and pointing to the Mandatory Judicial Notice Plaintiffs filed in this matter. (Dkt. 187, 197.) This Court has conducted a *de novo* review of the record and finds the Magistrate Judge correctly decided the Motion to Dismiss Ownit. The Motion in question is Plaintiffs own. It requests voluntary dismissal of Ownit as a party in this case. In considering the Motion, the Magistrate Judge proceeded carefully by staying the case and ordering the parties to attend a case management conference before Magistrate Judge Larry M. Boyle. The purpose of this conference was, given their *pro se* status, to ensure Plaintiffs understood the consequences of their Motion to Dismiss Ownit. Magistrate Judge Boyle issued a Report on Voluntary Case Management Conference which unequivocally demonstrates that the Plaintiffs understood the consequences of their Motion to Dismiss and proceeding without Ownit as a defendant in this matter. (Dkt. 186.) Plaintiff has not sought to withdraw its Motion to Dismiss Ownit nor shown any basis upon which to not grant their Motion. Accordingly, the Court will adopt the Report’s recommendation to grant the Motion to Dismiss Ownit.

ORDER

Having conducted a *de novo* review of the Report and Recommendation, this Court finds that Chief Magistrate Judge Dale's Report and Recommendation is well founded in law and consistent with this Court's own view of the evidence in the record. Acting on the recommendation of Magistrate Judge Dale, and this Court being fully advised in the premises, **IT IS HEREBY ORDERED** that the Report and Recommendation entered on July 16, 2012, (Dkt. 190), should be, and is hereby, **INCORPORATED** by reference and **ADOPTED** in its entirety.

THEREFORE, IT IS HEREBY ORDERED as follows:

- 1) Plaintiffs' Motion to Dismiss Defendant Ownit Mortgage Solutions Inc. (Dkt. 166) is **GRANTED**.
- 2) Plaintiffs' Motion to Dismiss Defendant Just Law Inc. (Dkt. 167) is **GRANTED**.
- 3) Defendant's Motion for Summary Judgment (Dkt. 162) is deemed **MOOT**.

DATED: August 20, 2012



Honorable Edward J. Lodge
U. S. District Judge