

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JYOTI SINGH,	§	
Plaintiff,	§	
v.	§	
	§	
RIVERSOURCE LIFE INSURANCE COMPANY,	§	No. A-19-CV-541 (LY)
Defendant.	§	
	§	
	§	

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE:

Before the court are Plaintiff’s Motion to Award Attorney’s Fees and Related Non-Taxable Expenses (Dkt. #114), Defendant’s Objections to Plaintiff’s Motion to Award Attorney’s Fees and Related Expenses (Dkt. #115), and Plaintiff’s Reply to Defendant’s Objections to Plaintiff’s Motion to Award Attorney’s Fees and Related Expenses (Dkt. #120).¹ After reviewing the filings, record and the relevant case law, the court submits the following Report and Recommendation to the District Court.

I. BACKGROUND

Jyoti Singh (“Singh”) brought claims against RiverSource Life Insurance Company (“RiverSource”) based on RiverSource’s failure to pay her claim for disability income benefits under its policy. Dkt. #15. Following a jury trial, the District Court entered judgment in favor of Singh. Dkt. #97. Singh was represented by attorneys Gregory L. Reed (“Reed”) and Lonnie Roach

¹ On January 6, 2023, the Motion was referred by United States District Judge Lee Yeakel to the undersigned a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(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. Dkt. #118.

(“Roach”) of Bemis, Roach & Reed in Austin, Texas. Before filing her Complaint, Singh was represented by Gael Beriro (“Beriro”) of Austin, Texas.

The judgment provided that Singh should recover \$633,152.00 in past benefits and premiums, \$215,823.70 in statutory interest under Texas Insurance Code § 542.060(a), \$87,150.96 in prejudgment interest, and her taxable costs. *Id.* The District Court also ordered that Singh “recover reasonable attorney's fees and related, non-taxable expenses, to be determined pursuant to Rule CV-54(b)(2) of the Local Rules of the United States District Court for the Western District of Texas.” *Id.*

RiverSource appealed the jury’s verdict to the Fifth Circuit. Dkt. #101. The Fifth Circuit later affirmed. Dkt. #116. RiverSource has exhausted its appeals, and Singh is a prevailing party.

Consistent with the District Court’s judgment, Singh seeks to recover her attorney’s fees and related non-taxable expenses. Dkt. #114. The Motion seeks recovery of \$444,173.42 in attorney’s fees, \$5,209.37 in related non-taxable expenses, and conditional attorney’s fees of \$45,000. As the prevailing party, Singh is entitled to seek recovery of attorney’s fees and costs as authorized by § 542.060 of the Texas Insurance Code and Local Rule CV-54(b)(2).

RiverSource lodges multiple objections to Singh’s request for fees and expenses. Dkt. #115. RiverSource complains that Singh’s counsels’ hourly rate of \$525-\$550 is excessive, that certain billing entries are excessive, duplicative, or otherwise not reasonable, and that Singh’s requested non-taxable expenses are not recoverable. *Id.*

II. ANALYSIS

To secure an award of attorneys’ fees from an opponent, the prevailing party must prove that: (1) recovery of attorneys’ fees is legally authorized, and (2) the requested attorneys’ fees are reasonable and necessary for the legal representation, so that such an award will compensate the

prevailing party generally for its losses resulting from the litigation process. Singh is clearly the prevailing party, and an award of attorneys' fees is legally authorized. TEX. INS. CODE § 542.060; LOC. R. CV-54(b)(2).

A determination of reasonable and necessary attorneys' fees is premised on the application of the lodestar method. Courts in the Fifth Circuit apply the lodestar method to calculate attorneys' fees. *Black v. SettlePou, P.C.*, 732 F.3d 492, 502 (5th Cir. 2013) (citing *Heidtman v. Cnty. of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999)). The lodestar amount is calculated by multiplying the number of hours an attorney reasonably spent on the case by an appropriate hourly rate. *Id.* (citing *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 490 (5th Cir. 2012)). The appropriate hourly rate is defined by the market rate in the community in which the district court sits and should reflect the prevailing market rates, not the rates that "lions at the bar may command." *Black*, 732 F.3d at 502 (citing *Smith & Fuller*, 685 F.3d at 490). Litigants seeking attorneys' fees have the burden to show the reasonableness of the hours billed and that the attorneys exercised reasonable billing judgment. *Black*, 732 F.3d at 502 (citing *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 799 (5th Cir. 2006)); *Riley v. City of Jackson*, 99 F.3d 757, 760 (5th Cir. 1996). The lodestar amount is entitled to a strong presumption of reasonableness. *Black*, 732 F.3d at 502 (citing *Perdue v. Kenny A.*, 559 U.S. 542, 552 (2010)).

After calculating the lodestar amount, the district court may adjust the amount of attorneys' fees based on the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *Id.*² Many of these factors are subsumed within the initial calculation of hours

² These factors are: (1) the time and labor required; (2) the novelty and difficulty of issues in the case; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to accepting the case; (5) the customary fee charged for those services in the relevant community; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Black*, 732 F.3d at 502 n.7 (citing *Johnson*, 488 F.2d at 717-19).

reasonably expended at a reasonable hourly rate and should not be double-counted. *See id.*; *Jason D.W. v. Houston Indep. School Dist.*, 158 F.3d 205, 209 (5th Cir. 1998) (internal citations omitted).

With this said, the court proceeds to calculate an appropriate attorneys' fee award.

A. Requested Attorneys' Fees, Expenses and Costs

Singh's application for fees seeks a total award of \$444,173.42 in attorneys' fees, \$5,209.37 in related non-taxable expenses, and conditional attorneys' fees of \$45,000. Dkt. #114. The application is supported by several exhibits, totaling approximately 43 pages. The supporting exhibits include:

1. Affidavit of Roach (4 pages). Dkt. #114-1 at 2-5.
2. Time records kept by Roach (10 pages). Dkt. #114-1 at 7-16.
3. Invoices prepared by Beriro, P.A. (8 pages). Dkt. #114-1 at 18-25.
4. Bemis, Roach & Reed records reflecting client expenses (3 pages). Dkt. #114-1 at 27-30.
5. A July 31, 2020 settlement demand letter from Roach to counsel for RiverSource (9 pages). Dkt. #114-2 at 3-11.
6. A September 25, 2020 letter from counsel for RiverSource to Roach in response to Singh's July 31, 2020 settlement demand (2 pages). Dkt. #114-2 at 13-14.

RiverSource does not object to this court's consideration of any of Singh's proposed exhibits. RiverSource does, however, lodge several objections to everything from requested hourly rates to individual items billed. In its response, RiverSource submitted additional documentation for the court's consideration:

1. Joint Notice of Settlement in other litigation (3 pages). Dkt. #115-1 at 2-4.
2. State Bar of Texas Department of Research & Analysis 2015 Hourly Fact Sheet (28 pages). Dkt. #115-2 at 2-30.
3. State Bar of Texas 2019 Income & Hourly Rates (27 pages). Dkt. #115-3 at 2-28.
4. Affidavit of Benjamin G. Kemble (2 pages). Dkt. #115-4 at 2-3.

Singh did not object to the court's consideration of any of RiverSource's exhibits. The court will take these objections up in turn.

B. Hourly Rate

Singh's application is based on attorneys' fees generated by three attorneys: Roach, Reed, and Beriro. Both Roach and Reed billed at an initial hourly rate of \$525. Dkt. #114-1 at 3. Both attorneys subsequently increased their standard hourly rate to \$550 on January 1, 2022. *Id.* Beriro charged an hourly rate of \$275. *Id.*

RiverSource proposes an hourly rate of \$300 for Roach and Reed. While RiverSource objects to Beriro's invoices, RiverSource makes only a fleeting argument that Beriro's \$275 hourly rate is unreasonable. Dkt. #115 at 9 ("his rate has not been attested to or verified as reasonable for the non-litigation work he performed"). RiverSource fails to suggest an alternative rate however. Riversource's objection to Beriro's pretrial work is described more fully below. Riversource's proposed \$300 hourly rate for Roach and Reed is based on the 2015 and 2019 State Bar of Texas hourly rates, comparison to defense counsel's charged rates, and reference to a few other cases.³

Having considered the parties' competing arguments and the entire docket, the court finds that the hourly rates proposed for Roach and Reed are reasonable. This was not easy litigation. As is its right, RiverSource fought this lawsuit at every step. This tenacity is evidenced by a cursory review of the docket from the initial denial of Singh's claim in 2016 to the conclusion of RiverSource's final unsuccessful appeal to the Fifth Circuit on January 4, 2023. *See* Dkt. #1, #116. The docket is replete with examples of aggressive pretrial practice by RiverSource.

This recitation is not designed to penalize RiverSource. Quite the contrary, the undersigned respects the tenacious and aggressive defense of a client's interest. Yet such a defense comes at a cost. One cost is an increase in the number of hours billed by Singh's counsel. Another cost is the

³ RiverSource reveals that its lead counsel charged \$285 an hour. Dkt. #115 at 4. However, RiverSource does not reveal how many hours its attorneys billed so as to allow for comparison to the number of hours Singh's counsel spent on pretrial practice, the trial, or appellate briefing and related travel.

need for Singh to retain highly qualified and equally tenacious counsel to represent her interests. Both Roach and Reed have over 31 years' experience. Both are Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization. Both are recognized by their peers as "Super Lawyers"—Roach in Employee Benefits and Reed in Social Security Disability. Both are AV-Preeminent by Martindale-Hubbell. *See* Dkt. #114 at 5, #114-1 at 2-5. Both attorneys have extensive experience litigating insurance cases in federal court.

All of this brings to mind the adage "you get what you pay for." Absent extremely qualified and experience attorneys, Singh would not have prevailed in this matter. In other words, Singh's retained lawyers made a significant difference and had positive effect on Singh's ability to eventually prevail. While the State Bar's 2015 and 2019 hourly rate reports are instructive, they are not controlling. *BalanceCXI, Inc. v. Int'l Consulting & Rsch. Grp., LLC*, No. 1:19-CV-767-RP, 2021 WL 8017992, at *3 (W.D. Tex. Sept. 22, 2021) (finding a blended rate of \$603.75 reasonable for Austin based attorneys).

This court is persuaded more by the qualification of the attorneys, the entirety of the litigation, and the results obtained. The hourly rates proposed by Roach and Reed are reasonable. *Heaven Media Ltd. v. Rebecca Everts & Reset Nation, LLC*, No. 1:22-CV-00025-LY, 2022 WL 17443627, at *6 (W.D. Tex. Dec. 6, 2022).

C. Time Expended

Singh's attorneys' fee reimbursement is based on a total of 825.37 hours worked by Roach and Reed as memorialized in the Bemis, Roach & Reed time records. Dkt. #114-1 at 16.

RiverSource argues that the time records submitted evidence excessive, duplicative, and unreasonable entries. In doing so, RiverSource lodges objections to several individual time record entries.

1. Objection to Preparation for Depositions

RiverSource claims that five entries related to Roach's preparation for three depositions are unreasonable. Dkt. #115 at 5. RiverSource contends that the 33.72 hours reflected in these entries is excessive and should be reduced by half. *Id.* Singh responds that all three witnesses (Singh, a RiverSource representative who denied the claim, and a RiverSource representative who rescinded the policy) were essential. Dkt. #120 at 4. Singh represents that the three depositions lasted around 19.5 hours and proper preparation for these depositions was important. *Id.*

The undersigned agrees with Singh. It is difficult to micromanage and second-guess Singh's counsels' belief that a significant amount of time was necessary to prepare for the deposition of these three witnesses. Again, corroboration of the need for plaintiff's counsels' preparation is evidenced in the successful results obtained at trial.

2. Objection to Non-Litigation Work

RiverSource objects to a March 18, 2022 entry for 2.57 hours by Roach. Dkt. #115 at 5. The entry reflects "[r]eview and respond to 03/15/2022 letter from RiverSource requesting additional proof of loss." RiverSource contends the:

time entry represents time spent on an issue that has no actual litigation activity associated with it, as the judgment had already been entered, and the Parties were communicating about future issues involving the Policy unrelated to the judgment. This entry should be stricken as unrelated to the present litigation.

Id.

Singh responds that:

RiverSource would sometimes try to subvert Singh's attorney/client relationship by contracting her directly, bypassing her lawyer. It did so, for example, in April 2021 when it rescinded Singh's insurance policy. It did so again in March 2022 while this case was pending at the Fifth Circuit Court of Appeals. On these occasions, it was reasonable for Plaintiff's counsel to intercede on Singh's behalf.

Dkt. #120 at 4-5.

The undersigned agrees with Singh. It is difficult to understand this objection in the first place. Singh was a represented party as it relates to RiverSource. Furthermore, Singh was in the middle of a pitched battle with RiverSource over her claim and the denial of benefits. In that setting, counsel for RiverSource doesn't have the right to unilaterally decide what communications relate to the litigation or not. This is particularly so when RiverSource represents that the communication was limited to "future issues involving the Policy unrelated to the judgment" but fails to elaborate on what those future issues were or why they were unrelated to the judgment. Dkt. 115 at 5.

3. Objections to Appellate Briefing Entries

RiverSource objects to 21 time-record entries by Roach related to preparation and finalization of the appellate brief. Dkt. #115 at 6. RiverSource argues that 115 hours represents an unreasonable amount of time to have been spent in preparation of the appellate briefing in this case. *Id.* RiverSource believes a 50% reduction is warranted "since it appears billing was claimed on duplicative work." *Id.* Singh maintains that time spent in preparation of the appellate brief was both necessary and reasonable as evidenced by the successful resolution of each issue raised by RiverSource on appeal. Dkt. #120 at 5. The time record entries to which RiverSource objects total approximately \$63,000.

The court's review of time record entries is based on faith. That is, the court takes Singh's counsel at his word that 115 hours of work was required to prepare the appellate brief. That preparation resulted in the submission of a brief that contributed to a successful result. While RiverSource is skeptical that this much time was required, that is all RiverSource has offered, skepticism. Neither party points to a persuasive case, study or treatise that describes the typical

costs of pursuing or defending an appeal in the aftermath of a jury verdict. Consequently, this objection is denied.

4. Objections to Travel and Preparation for Appellate Argument

RiverSource objects to ten time-record entries by Roach and Reed related to early October 2022 travel to New Orleans for oral argument. Dkt. #115 at 7. RiverSource argues attorney travel time is typically compensated at 50% of the attorney's typical hourly rate. *Id.* RiverSource also contends that four entries totaling 14 hours related to Reed's travel is inappropriate since Roach actually argued before the panel. *Id.*

Singh responds that Reed did not travel to New Orleans to simply "watch" the oral argument. Dkt. #114 at 5. Instead, he was co-counsel at trial, and he helped Roach prepare for argument. *Id.* Singh does not address RiverSource's contention that a 50% reduction is warranted for travel time.

Travel time and expenses incurred in relation to oral argument are appropriate for reimbursement as attorneys' fees. *Chem. Mfrs. Ass'n v. U.S.E.P.A.*, 885 F.2d 1276, 1283 (5th Cir. 1989). Nonetheless, there is persuasive authority for the proposition that travel time should be reduced by 50%. *See, e.g., Union Pac. R.R. Co. v. Am. Ry. & Airway Supervisors' Ass'n*, No. SA-17-CV-00270-XR, 2021 WL 2444957, at *1 (W.D. Tex. June 15, 2021) (citing *In re Babcock & Wilcox*, 526 F.3d 824, 826–28 (5th Cir. 2008) (holding a reduction of 50% in rate during travel hours was an appropriate use of discretion by the district court awarding attorneys' fees)). The court finds that a 50% reduction to the time expended by Roach is appropriate. The court also finds that Singh has failed to meet her burden that Reed's presence in New Orleans was necessary.

Given these findings, Singh's requested reimbursement must reflect the elimination of Reed's four time-related entries totaling fourteen hours and \$7,700. Similarly, the remaining six

time-entries related to Roach's travel to and from New Orleans totals 32.14 hours. Only half of that time is compensable. Consequently, Singh's requested reimbursement should be reduced by another \$8,838.50.

In summary, Singh's total requested reimbursement is reduced by a total of \$16,538.50.

D. Objection to Plaintiff's Requested "Nontaxable Expenses"

RiverSource contends Singh's request for recovery of "nontaxable expenses" is not recoverable. Dkt. #115 at 8. RiverSource argues that Singh does not identify these expenses but notes they appear to be related to airfare, hotel, and meal expenses for the argument before the Fifth Circuit in New Orleans. *Id.* RiverSource also notes that Singh has made no showing that these expenses are even recoverable. *Id.*

Singh's response to this objection is confusing:

Exhibit A-3 [Dkt. #114-1 at 27-30] is a list of expenses Plaintiff's counsel incurred in the prosecution of this case. Some of these expenses are included in Plaintiff's bill of costs and are excluded from this request. The remainder, \$5,209.37 are related non-taxable expenses and recoverable under Federal Rule of Civil Procedure 54(d)(2)(A).

Dkt. #114 at 8.

The court has reviewed the above referenced list of nontaxable expenses submitted by Singh. That exhibit is a compilation of two separate lists, which together list expenses totaling \$12,933.12. The first compilation is a three-page list of miscellaneous client expenses totaling \$11,310.17. The second compilation is a one-page list of expenses related to oral argument in New Orleans totaling \$1,622.95. What is unclear is how Singh arrived at her request for reimbursement of only \$5,209.37 of these expenses, the remainder having been included in Singh's original bill of costs. How is the court supposed to reconcile the difference? Does Singh really expect the court to compare the amended bill of cost (Dkt. #102, filed on January 19, 2022) to the entries on Exhibit A-3 in order to make this determination?

It was incumbent on Singh, not the court, to describe exactly what Singh believed was an appropriate list of costs and expenses. For this reason, the court finds that Singh has failed to meet her burden of persuasion that the expenses listed in the first three-page compilation totaling \$11,310.17 are appropriate.

The second one-page list of expenses related to travel for oral argument in New Orleans and post-dates the January 19, 2022 submission of the amended bill of costs. RiverSource complains that Singh failed to attach receipts evidencing the hotel, airfare, parking, and meal expenses listed. RiverSource does not address whether it requested, but was rebuffed, in an effort to review the receipts during the meet and confer required under Local Rule CV-54. Without such a representation, the actual receipts need not be submitted. In any event, each of these individual travel expenses appear reasonable in amount and purpose. *Chem. Mfrs. Ass'n*, 885 F.2d at 1283 (travel expenses incurred for oral argument is properly categorized as part of attorneys' fees rather than costs).

Singh's request for nontaxable expenses is limited to \$1,622.95 in expenses related to travel to New Orleans for oral argument.

E. Objection to Attorney Beriro's Pre-Litigation Fees

RiverSource objects to any award that includes fees related to Singh's pre-suit attorney, Gael Beriro. Dkt. #115 at 9. RiverSource argues:

First, there is no evidence showing Mr. Beriro's involvement was necessary for the lawsuit itself. Rather, he was retained by Plaintiff to assist in her claim for benefits before suit was even filed by a different attorney. Additionally, his rate has not been attested to or verified as reasonable for the non-litigation work he performed, nor have the hours or reasonableness of hours allegedly spent been attested to by him. Plaintiff cannot be permitted to recover fees based on a hearsay invoice for non-litigation work (with no evidence of payment) and her current counsel's speculative and conclusory statement that the work appeared to be "good quality."

Id.

Singh responds that Beriro's billing records are included as an exhibit (Dkt. #114-1 at 18-25). Dkt. #120 at 8. These records detail the work done and show that a portion of the fees was paid in advance and the balance billed. *Id.* These records are supported by Roach's affidavit (Dkt. #114-1 at 4, ¶9), which supports the quality of Beriro's work, the reasonableness of his charges, that Singh paid Beriro the total charged, and the fact that Beriro's work was introduced as a joint exhibit at trial. Dkt. #120 at 8.

This litigation arguably began when RiverSource denied Singh's claim. Singh wisely employed the services of Beriro to advance her claim. These early efforts to amicably resolve her claim were rebuffed by RiverSource. At that point, it became necessary for Singh to retain the services of accomplished trial attorneys. RiverSource does not cite a single case for the proposition that legal work performed before the filing of a complaint is unrecoverable. Beriro's was retained by Singh only because RiverSource denied her claim. A jury subsequently determined that denial was unlawful.

Beriro's invoiced amounts are clearly recoverable as attorney's fees. RiverSource's objection to the contrary is denied.

F. \$45,000 in Conditional Expenses

Among the fees and costs for which Singh is seeking recovery is \$45,000 in what is characterized as "conditional attorney fees." Dkt. #114 at 9. Singh's request is "conditioned on 1) RiverSource filing a notice of appeal of the court's order awarding attorney fees; and 2) the appeal must be unsuccessful." *Id.* Singh provides a dollar figure but does not provide a basis for the amount requested. Surprisingly, RiverSource did not object to the award of conditional attorney fees.

Singh's request for conditional attorneys' fees should RiverSource unsuccessfully appeal the award of attorneys' fees is granted. That said, the amount of any additional reimbursement will be determined if, and when, that unsuccessful appeal is finalized.

G. The Lodestar

Singh's proposed hourly rates for the attorneys involved in this litigation are appropriate. The court found merit in defense objections to a limited number of billing entries.

The Motion originally sought \$444,173.42 in attorney's fees, \$5,209.37 in related non-taxable expenses and conditional attorney's fees of \$45,000.

Singh's original \$444,173.42 attorney's fee request is reduced by \$16,538.50 to reflect reductions related to travel and preparation for appellate argument, for a total of \$427,634.92.

Singh's original \$5,209.37 request for recovery of nontaxable expenses is reduced to \$1,622.95.

Singh's request for conditional attorneys' fees is granted but the amount of those fees will be decided at a later date, if that becomes necessary.

H. Johnson Factors

Neither Singh nor RiverSource seek any adjustments based on the application of the *Johnson* factors. Similarly, the court does not find any adjustments based on the *Johnson* factors is necessary.

III. ATTORNEY'S FEES AWARD

The court has determined the appropriate lodestar and further determined that the no further adjustments to the lodestar are necessary. Thus, the court finds that Singh is to be awarded reasonable and necessary attorneys' fees and nontaxable expenses in the amount of \$429,257.87.⁴

⁴ The amount represents the sum of \$427,634.92 in attorneys' fees and \$1,622.95 in nontaxable expenses.

IV. EXPENSES AND COSTS

RiverSource did not object to Singh's amended bill of costs (Dkt. #102) totaling \$7,723.75.

V. RECOMMENDATIONS

For these reasons, the undersigned **RECOMMENDS** that Plaintiff's Motion to Award Attorney's Fees and Related Non-Taxable Expenses (Dkt. #114) be **GRANTED, in part, and DENIED, in part**. The undersigned **RECOMMENDS** that the court enter judgment for the Plaintiff, Jyoti Singh, for attorney's fees and nontaxable expenses in the amount of **\$429,257.87**.

The court further **RECOMMENDS** that Singh be awarded costs in the amount of **\$7,723.75**.

The court further **RECOMMENDS** that Singh's request for conditional attorney's fees if RiverSource pursues an unsuccessful appeal of the District Court's award be **GRANTED**. The amount of additional attorney's fees will be determined after resolution of any further appeals by RiverSource.

VI. OBJECTIONS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from

appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

SIGNED January 24, 2023.



MARK LANE
UNITED STATES MAGISTRATE JUDGE