Appendix's Table.

Appendix's.

5th Circuit Court of Appeals Page #.

USDC for the Western District in Austin, Texas

UDSC answer to the petitioners' request for

5TH CIRCUIT COURT OF APPEAL DECISIONS.

1. 5th Circuit Judges denial of reconsideration...(A).

APPENDIX TAB-A.

United States Court of Appeals
for the Fifth Circuit

No. 20-50851

CATHY CARR,

Plaintiff—Appellant,

versus

NATIONAL PRESTO INDUSTRIES, INCORPORATED; THE WAL-MART STORE; THE WALMART CORPORATION; OTHER UNKNOWN DEFENDANTS,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:19-CV-191

ORDER:

On June 2, 2021, the clerk DENIED Appellant's motion to reopen the case. Upon consideration of Appellant's motion for reconsideration, IT IS ORDERED that the motion is DENIED.

JAMES C. HO
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 17, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-50851 Carr v. Ntl Presto Indus
USDC No. 1:19-CV-191

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By: Roeshawn Johnson, Deputy Clerk
504-310-7998

Ms. Cathy Carr
Ms. Jeannette Clack
Mr. Michael H. Hull
Mr. Timothy Riley Schupp
Mr. Robert William Vaccaro

2. 5th Circuit clerk's denial to reopen.....(B).

APPENDIX TAB-B.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 02, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-50851 Carr v. Ntl Presto Indus
USDC No. 1:19-CV-191

The court has denied appellant's motion to reinstate the appeal.

Sincerely,

LYLE W. CAYCE, Clerk

By: Roeshawn Johnson
Roeshawn Johnson, Deputy Clerk
504-310-7998

Ms. Cathy Carr
Ms. Jeannette Clack
Mr. Michael H. Hull
Mr. Timothy Riley Schupp
Mr. Robert William Vaccaro

(B)

Clerk denying reopening - #2

3. 5th Circuit dismissal OF APPEAL..... (C).

APPENDIX TAB-C.

United States Court of Appeals for the Fifth Circuit

No. 20-50851

CATHY CARR,

recieved June 14-2021 Brought to Dave

Plaintiff—Appellant,

versus

NATIONAL PRESTO INDUSTRIES, INCORPORATED; THE WAL-MART STORE; THE WALMART CORPORATION; OTHER UNKNOWN DEFENDANTS,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:19-CV-191

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of January 27, 2021, for want of prosecution. The appellant failed to timely order transcript and make financial arrangements with the court reporter.

(C)

#3

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

By: _____
Roeshawn Johnson, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

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

CATHY CARR, Plaintiff, v. NATIONAL PRESTO INDUSTRIES, INC., et al., Defendants.	§ § § § § § § § § §	1:19-CV-191-RP

ORDER

Before the Court is the order and report and recommendation of United States Magistrate Judge Mark Lane concerning Defendants' Motion for Summary Judgment, (Dkt. 32), Plaintiff's Motion for Summary Judgment, (Dkt. 39), Plaintiff's Motion to Exclude Intertek Papers, (Dkt. 42), Plaintiff's Motion to Compel Discovery from Defendants, (Dkt. 43), and Plaintiff's Motion to Exclude Both Experts of the Defendants for Cause, (Dkt. 44). (Order and R. & R., Dkt. 71). In his report and recommendation, Judge Lane recommends that the Court grant Defendants' Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment. (*Id.* at 10). In his order, Judge Lane denied Plaintiff's Motion to Exclude Intertek Papers, Plaintiff's Motion to Compel Discovery from Defendants, and Plaintiff's Motion to Exclude Both Experts of the Defendants for Cause. (*Id.* at 10–11). Plaintiff Cathy Carr ("Carr") timely filed objections to the report and recommendation, (Objs., Dkt. 74), and the Court construes her objections also as an appeal from Judge Lane's orders on her nondispositive motions, (*see id.*).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Carr timely objected to each portion of the report and recommendation, the

Court reviews the report and recommendation *de novo*. Having done so, the Court overrules Carr's objections and adopts the report and recommendation as its own order.

A district judge may reconsider any pretrial matter determined by a magistrate judge where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). District courts apply a "clearly erroneous" standard when reviewing a magistrate judge's ruling under the referral authority of that statute. *Castillo v. Frank*, 70 F.3d 382, 385 (5th Cir. 1995). The clearly erroneous or contrary to law standard of review is "highly deferential" and requires the court to affirm the decision of the magistrate judge unless, based on the entire evidence, the court reaches "a definite and firm conviction that a mistake has been committed." *Gomez v. Ford Motor Co.*, No. 5:15-CV-866-DAE, 2017 WL 5201797, at *2 (W.D. Tex. Apr. 27, 2017) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The clearly erroneous standard "does not entitle the court to reverse or reconsider the order simply because it would or could decide the matter differently." *Id.* (citing *Guzman v. Hacienda Records & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015)). Because Carr timely filed an appeal from Judge Lane's order, the Court reviews Judge Lane's order to determine if it is clearly erroneous or contrary to law. Having done so, the Court denies Carr's appeal and affirms Judge Lane's order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 71), is **ADOPTED**. The Court **GRANTS** Defendants' Motion for Summary Judgment, (Dkt. 32), and **DENIES** Plaintiff's Motion for Summary Judgment, (Dkt. 39).

IT IS FURTHER ORDERED that the Court **AFFIRMS** Judge Lane's order denying Plaintiff's Motion to Exclude Intertek Papers, (Dkt. 42), Plaintiff's Motion to Compel Discovery from Defendants, (Dkt. 43), and Plaintiff's Motion to Exclude Both Experts of the Defendants for Cause, (Dkt. 44). (Order and R. & R., Dkt. 71).

IT IS FURTHER ORDERED that the Court **DENIES** Carr's appeal, (Dkt. 74).

IT IS FINALLY ORDERED that Carr's claims are **DISMISSED WITH PREJUDICE**.

The Court will enter final judgment by separate order.

SIGNED on September 12, 2020.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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

CATHY CARR,	§	
Plaintiff,	§	
V.	§	
	§	
NATIONAL PRESTO INDUSTRIES, INC., ET AL.,	§	**A-19-CV-191-RP**
	§	
Defendants.	§	

ORDER AND REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE ROBERT PITMAN
UNITED STATES DISTRICT JUDGE:

Before the court are Defendants' Motion for Summary Judgment (Dkt. #32), Plaintiff's Motion for Summary Judgment (Dkt. #39), Plaintiff's Motion to Disqualify the Expert Testimony of the Defendants (Dkt. #41), Plaintiff's Motion to Exclude Intertek Papers (Dkt. #42), Plaintiff's Motion to Compel Discovery from the Defendants (Dkt. #43), Plaintiff's Motion to Exclude Both Experts of the Defendants for Cause (Dkt. #44), and all related briefing.[1] Having considered the briefing, the applicable law, the entire case file, and determining that a hearing is not necessary, the court issues the following order and report and recommendation.

I. BACKGROUND

Proceeding pro se, Cathy Carr brings this suit against National Presto Industries, Inc., the Walmart Store, and Walmart Corporation (with Walmart, as "Walmart," with National Presto, as "Defendants") for damages allegedly caused by a food dehydrator manufactured by National Presto and purchased from Walmart that caught fire in her apartment. Dkt. #1. She asserts

[1] The dispositive motions were referred to the undersigned for a Report and Recommendation and the non-dispositive motions were referred for disposition by United States District Judge, Robert Pitman, pursuant to 28 U.S.C. § 636, Federal Rule of Civil Procedure 72, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

claims for breach of written and implied warranty, products liability, unspecified portions of the UCC, personal injury, and negligence. *Id.* at 14-16.

Before the court are the parties' cross motions for summary judgment and a slew of other non-dispositive motions filed by Carr in response to Defendants' summary judgment motion. As the summary judgment motions were filed first, the court will first consider those and then consider whether the remaining motions would alter the summary judgment analysis.

II. SUMMARY JUDGMENT AND EXPERT STANDARDS

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only "if the movant shows there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986).

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence. *Id.* The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). The parties may satisfy their respective burdens by tendering depositions, affidavits, and other competent

evidence. *Estate of Smith v. United States*, 391 F.3d 621, 625 (5th Cir. 2004). Rule 56 does not impose a duty on the court to "sift through the record in search of evidence" to support the nonmovant's opposition to the motion for summary judgment. *Id.*

The court will view the summary judgment evidence in the light most favorable to the non-movant. *Griffin v. United Parcel Serv., Inc.*, 661 F.3d 216, 221 (5th Cir. 2011). The non-movant must respond to the motion by setting forth particular facts indicating that there is a genuine issue for trial. *Miss. River Basin Alliance v. Westphal*, 230 F.3d 170, 174 (5th Cir. 2000). "After the non-movant has been given the opportunity to raise a genuine factual issue, if no reasonable juror could find for the non-movant, summary judgment will be granted." *Id.*

Rule 702 of the Federal Rules of Evidence governs the admissibility of expert testimony, providing that:

> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (b) the testimony is based on sufficient facts or data;
> (c) the testimony is the product of reliable principles and methods; and
> (d) the expert has reliably applied the principles and methods to the facts of the case.

FED. R. EVID. 702. Rule 702 was amended to incorporate the principles first articulated by the United States Supreme Court in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *See* FED. R. EVID. 702, Adv. Comm. Notes (2000). Under *Daubert*, expert testimony is admissible only if the proponent demonstrates that: (1) the expert is qualified; (2) the evidence is relevant to the suit; and (3) the evidence is reliable. *See Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998); *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 989 (5th Cir. 1997).

Following *Daubert* and its progeny, trial courts act as gatekeepers, overseeing the admission of scientific and nonscientific expert testimony. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999). Trial courts must make "a preliminary assessment of whether the

reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." *Daubert*, 509 U.S. at 592–93. In carrying out this task, district courts have broad latitude in weighing the reliability of expert testimony for admissibility. *See Kumho Tire Co.*, 526 U.S. at 152. The district court's responsibility "is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Id.*

III. SUMMARY JUDGMENT MOTIONS

Defendants contend that Carr has not retained an expert to testify as to the what caused the fire and therefore cannot prove that the food dehydrator caused the fire in her apartment or was defective. Fire personnel, who responded to the apartment fire, created an Incident Detail Report that stated "[t]he cause of the small fire was unattended cooking. The resident had left something in an electric appliance cooking container that overheated and burned." Dkt. #32, Exh. A at 2.

Defendants' expert, Joe Sesniak, relied on the Incident Detail Report; photographs related to the scene, which show a very cluttered surface surrounding the food dehydrator; a visual inspection the food dehydrator; and radiographic images of the food dehydrator.[2] Dkt. #32, Exh. B at 2-3. He noted the food dehydrator was placed on top of the cooktop, an uneven surface, in violation of the manufacturer's instructions. *Id.* at App'x 1, Inst. 10. The food dehydrator showed melt damage to only one side of the unit, and Sesniak ruled out any type of overheating condition of the heating element as a whole. *Id.* at 8. He found the heating element was "intact and continuous" and there were no areas of melt damage visible on the heating element wire or any visible evidence of a short circuit or other heating element failure. *Id.* Sesniak concluded,

[2] Carr did not allow him to disassemble the unit to test it. *Id.* at 8.

among other things, that; 1) there was insufficient evidence to determine the fire's point of origin, 2) fire effects on the dehydrator were consistent with exposure to an external heat source, and 3) no apparent failure or defect in the dehydrator was identified during visual inspection. *Id.* at 11-12. Jeff Morgan, National Presto's Vice President of Engineering and International Supply Chain, reviewed Sesniak's report and agreed with his opinions. Dkt. #32, Exh. 2 at ¶¶ 7-8.

Defendants argue that the fire personnel only opined as to the fire's origin, but they did not opine as to a product defect or cause of the fire. Defendants contend Carr's *ipso facto* causation argument is legally insufficient to establish causation. *See* Dkt. #32 at 9-11 (citing cases).

Without leave of court and very late,[3] Carr filed a 43-page response, Dkt. #37, and a 48-page Declaration, Dkt. #38, in opposition to Defendants' motion, and much of both documents are single spaced and highly repetitive.[4] Both the Response and the Declaration assert the same arguments opposing Defendants' motion. Carr filed her own summary judgment motion the same day she filed her response to Defendants' motion, which mostly rehashes the arguments of Defendants' motion. In summary, Carr objects to Sesnaik's qualifications and methodology and argues her own theory that the food dehydrator overheated causing the fire with her own explanation of how this could have happened.[5] As evidentiary support, she relies on her own

[3] Defendants filed their reply before Carr filed her response to Defendants' motion because it seems Carr served, but did not file, a response to Defendants' motion, an amended response, and a request that the summary judgment motion be deferred so she could take additional discovery, which she sent to Defendants on several days later on April 9, 2020. *See* Dkt. #34. The discovery deadline in this case was April 30, 2020.

[4] "Unless otherwise authorized by the court, a response to a dispositive motion is limited to 20 pages . . . . exclusive of the caption, signature block, any certificate, and accompanying documents." Local Rule CV-7(e)(3); *see also* Local Rule CV-10(a) (requiring double spacing of all pleadings, motions, and other submissions).

[5] Carr contends the food dehydrator could only function at one temperature, which was too hot for herbs. She also contends the food dehydrator allowed liquid to drip onto the heating coils. In later briefing, she asserts a fan blade was also defective. It is unclear whether she intends that one or a combination of these issues started the fire. However, resolving this confusion is not necessary to these motions.

observations of the scene after the fire was extinguished,[6] the fire department's Incident Detail Report, and others' online reviews of the product.

Carr alleges the food dehydrator was defective and caused the fire in her apartment, and this allegation is central to all of her claims. Although Defendants submitted their expert's report, which concluded the cause of the fire could not be determined, Defendants' primary basis for summary judgment is that Carr has no expert opinion that the food dehydrator caused the fire. Carr's expert designation was due on January 15, 2020, Dkt. #23 at ¶ 5, and it is undisputed she did not identify an expert or serve an expert report.

To prove a design defect under Texas law, "a plaintiff must prove that (1) the product was defectively designed so as to render it unreasonably dangerous; (2) a safer alternative design existed; and (3) the defect was a producing cause of the injury for which the plaintiff seeks recovery." *Emery v. Medtronic, Inc.*, 793 F. App'x 293, 295 (5th Cir. 2019) (quoting *Goodner v. Hyundai Motor Co.*, 650 F.3d 1034, 1040 (5th Cir. 2011)). To be a producing cause, "(1) the cause must be a substantial cause of the event in issue and (2) it must be a but-for cause, namely one without which the event would not have occurred." *Id.* (quoting *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 46 (Tex. 2007)). "Under Texas law, expert testimony is generally encouraged if not required to establish a products liability claim. In particular, expert testimony is crucial in establishing that the alleged design defect caused the injury." *Id.* (quoting *Sims v. Kia Motors of Am., Inc.*, 839 F.3d 393, 409 (5th Cir. 2016)). "Lay testimony is adequate to prove causation in those cases in which general experience and common sense will enable a layman to determine, with reasonable probability, the causal relationship between the event and the condition." *Id.* at 295-96 (quoting *Morgan v. Compugraphic Corp.*, 675 S.W.2d 729, 733 (Tex. 1984)). In a similar case involving a plug-in air freshener that allegedly started a house fire, the court held

[6] It is undisputed she was not at home when the fire occurred. *See* Dkt. #32, Exh. A.

resolution of the causation issue by laypersons "would be purely speculative." *Andrews v. Dial Corp.*, 143 F. Supp. 3d 522, 529 (W.D. Tex. 2015) (Sparks, J.). The court granted summary judgment in defendant's favor because the plaintiff was "required to present competent expert testimony on the causation question and failed to do so." *Id.* at 530.

Carr relies on the fire department's Incident Detail Report from the fire, which states:

> The cause of the small fire was unattended cooking. The resident had left something in an electric appliance cooking container that overheated and burned. Damage was contained to the cooking pot with some heat damage to the cabinet and refrigerator. Water damage was throughout the building.

Dkt. #32 Exh. A at 2, 3. In *Andrews*, where plaintiffs asserted a plug-in air freshener started a fire, the court held a fire-department investigator's opinions about the cause of the fire were speculative. *Andrews*, 143 F. Supp. 3d at 529 ("[his] opinions that a malfunction in the Renuzit air freshener caused the fire are speculative"). The court found the fire department investigator was "clearly qualified to opine concerning the area and point of origin of a fire, [but] that does not mean [he is] qualified to opine concerning whether a defect in a particular product caused a fire." *Id.* The fire department's Incident Detail Report in this case is no more entitled to expert status. Carr has provided no information about the fire department employees who completed the report or their qualifications. Carr did not designate them as experts. No one from the fire department examined the food dehydrator to determine whether a defect in the device caused the fire. Accordingly, the fire department Incident Detail Report is inadequate to show causation on this case.

Carr asserts she is qualified to opine on causation based on her membership in "Texas Hackers Space" and because "she designs things and she creates and makes products." Dkt. #37 at 6. Carr has not shown she is qualified to opine on the cause of the fire or defects of the food dehydrator. She *is* qualified to testify as to her first-hand observations of the apartment and food

dehydrator after the fire, but she may not speculate on what caused the fire or what may have been wrong with the food dehydrator.

Carr also relies consumer product reviews to contend the food dehydrator has design defects. However, Carr fails to actually link these consumer opinions to the product at issue and show these opinions are actually opinions on this particular food dehydrator.[7] Moreover, these opinions are no more reliable than her own or the fire department employees'. Carr has not shown any of these individuals are qualified to opine on causation or that their circumstances are sufficiently similar to her own.

Accordingly, Carr has come forward with no competent summary judgment evidence on causation. "Although Plaintiff['s] evidence may create 'a strong suspicion' that a defect in the [food dehydrator] caused the fire, suspicion is insufficient to demonstrate causation." *See Andrews*, 143 F. Supp. 3d at 529–30. Therefore, the undersigned will recommend Defendants' summary judgment motion be granted and Carr's motion be denied.

IV. OTHER MOTIONS AND RELIEF

Carr's summary judgment filings and other motions raise several other issues that she contends should prevent summary judgment. However, none of these issues change the fact that Carr has no expert opinion on causation.

Carr first attacks Sesniak's qualifications as an expert. Sesniak has a Bachelor of Science in Fire, Arson & Explosion Investigation from Eastern Kentucky University. Dkt. #32 at App'x 2. He has been the owner and principal expert of Forensic Fire Consultants since 2000 and has worked in fire investigation roles since at least 1985. *Id.* He has various fire investigation certifications, has provided expert opinions in numerous cases, has received additional training

[7] The opinions appear to be online product reviews, but the specific product being reviewed is not demonstrated from what was provided.

on the topic, has taught on the topic, and has published on the topic. *Id.* He is adequately qualified to give his opinion in this case.

Carr also argues Sesniak's methodology is unreliable. She argues he states there is nothing defective in the food dehydrator but clearly a broken fan blade is defective. However, Carr misstates his opinion. He opined that he could find nothing defective that caused the fire and the damaged fan blade was where the unit had been damaged by fire. Carr is in effect arguing that a broken fan blade caused the fire rather than the fire caused the broken fan blade. While she may disagree with his opinion, this does not render his opinion unreliable.

Carr also complains that he attached a 2018 device manual to his report when her fire was in 2017 and that he used a different model device to render his opinion. Defendants contend the manuals are only immaterially different and Carr was informed of this in a supplemental report. Similarly, Defendants point out that Carr did not allow Sesniak to disassemble her device and the feature that Carr complains is different—the power indicator light—is immaterial to his analysis. Finally, Carr complains that she did not have time to fully review his report. However, Carr did not seek leave to extend the time to object to report.

Carr also objects to Jeff Morgan's "expert" opinion. Morgan is National Presto's Vice President of Engineering and International Supply Chain. He was designated as a fact witness, not an expert, and can testify as to how the product at issue worked. Accordingly, the undersigned denies Carr's motions to disqualify experts as presented in response to Defendants' summary judgment motion, her own summary judgment motion, and her two separate motions to disqualify. Dkt. #41, #44. Moreover, even if the court were to strike Sesniak and Morgan, Carr still has not shown the fire was caused by a defect in the food dehydrator.

Carr also moves to strike the 2018 device manual attached to Sesniak's report. She claims she sought this in discovery as well as other documents that were not produced. On April 27, 2020, Carr moved to compel additional discovery from Defendants that she claims she previously asked for but was not provided. Discovery in this case closed April 30, 2020. Dkt. #23 at ¶ 7. Carr includes discovery requests that are dated late March 2020, but Defendants contend they were not sent these requests until early April 2020 giving them insufficient time to respond before the discovery deadline. *See* Local Rule CV-16(d) ("Written discovery is not timely unless the response to that discovery would be due before the discovery deadline. The responding party has no obligation to respond and object to written discovery if the response and objection would not be due until after the discovery deadline."). Carr presents nothing to support her claim that she previously requested the documents. Carr also seeks to force Defendants' expert to respond to certain requests for admission. This is not allowed under the Federal Rules of Civil Procedure. If Carr wanted to question Sesniak, she could have sought his deposition. Most importantly, none of the requested relief will change the outcome of the parties' summary judgment motions. Accordingly, the requested relief is denied.

V. ORDER AND RECOMMENDATIONS

For the reasons stated above, the court **RECOMMENDS** Defendants' Motion for Summary Judgment (Dkt. #32) be **GRANTED,** Carr's claims be dismissed with prejudice, and judgment be entered in favor of Defendants. The court further **RECOMMENDS** Plaintiff's Motion for Summary Judgment (Dkt. #39) be **DENIED**.

The court **DENIES** Plaintiff's Motion to Disqualify the Expert Testimony of the Defendants (Dkt. #41), Plaintiff's Motion to Exclude Intertek Papers (Dkt. #42), Plaintiff's

Motion to Compel Discovery from the Defendants (Dkt. #43), Plaintiff's Motion to Exclude Both Experts of the Defendants for Cause (Dkt. #44).

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 (1985); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).

SIGNED August 7, 2020.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

Additional material from this filing is available in the Clerk's Office.