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Appendix A (No. 20-50678)

Rule 14.1(i)(i)—USCA5 ruling

June 7, 2021. Ruling with corrected Judgment. †

Case: 20-50678 Document: 00515820284 Page: 1

Date Filed: **04/13/2021** (emphasis added)

Case: 20-50678 Document: 00515888776 Page: 1

Date Filed: **06/07/2021** (emphasis added)

Case 1:20-cv-00070-RP Document 59 Filed **06/07/21**

Page 1 of 8 ‡ (emphasis added)

**United States Court of Appeals
for the Fifth Circuit**

United States Court of Appeals
for the Fifth Circuit

FILED

April 13, 2021

Lyle W. Cayce

Clerk

No. 20-50678

WESLEY PERKINS,

Plaintiff—Appellant,

versus

EXECUTIVE DIRECTOR WHITNEY BREWSTER, TEXAS

† The Corrected Judgment, filestamped Apr. 13, wasn't even up for correction until Apr. 23, and it wasn't Served on Perkins until June 7.

‡ The 8-pg .pdf doc: Ruling – 4 pgs; Corrected Judgment – 2 pgs; blank, except for pg. no. (2) – 1 pg; June 7 (2021) cover letter (USCA5 to WDTex) – 1 pg.

DEPARTMENT OF MOTOR VEHICLES, WHICH
DEPARTMENT IS A PUBLIC CHARITABLE TRUST AND
NON-BENEFICIARY, *Officially and Individually*; CITY
OF AUSTIN, A MUNICIPAL CORPORATION; CITY
ATTORNEY ANNE MORGAN, *Officially and
Individually*; POLICE CHIEF BRIAN MANLEY,
Officially and Individually; J. M. HALLMARK,
ARRESTING OFFICER, *Officially and Individually*;
SOUTHSIDE WRECKER, A COMMERCIAL ENTERPRISE;
JUDGE LEE YEAKEL,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-70

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit
Judges* [1 2]

Per Curiam: *

Wesley Perkins has filed five federal lawsuits, ¹

* Pursuant to 5TH CIRCUIT RULE 47.5, the court
has determined that this opinion should not be
published and is not precedent except under the
limited circumstances set forth in 5TH CIRCUIT RULE
47.5.4

¹ In addition to this one, see *Perkins v. Lipscombe*,
No. 1:20-CV-493-RP (W.D. Tex. July 20, 2020)
(dismissed as frivolous); *Perkins v. Mischian*, No.
1:20 -CV-296-RP-ML (W.D. Tex. July 17, 2020)
(dismissed for failure to serve process); *Perkins v.
Brewster*, 2018 WL 814250, at *1 (W.D. Tex. Feb. 9,
(continued...))

one habeas petition,² and three state court appeals³ related to a series of traffic stops that he challenges again in this appeal. He consistently argues that he is not subject to the Texas Transportation Code because he has not consented to such regulation. He thus concludes that his arrest for driving without a license or registration tags or plates violated his civil rights. *Perkins v. Ivey*, 772 F. App'x 245, 245-46 (5th Cir. 2019).

This time around, the district court granted a motion for a more definite statement of Perkins's allegations. See FED. R. CIV. P. 12(e). Perkins responded with an amended complaint. In addition to his argument that he has not engaged in "transportation" or driven a "vehicle," Perkins challenged the district court's ability to transfer portions of his case to a magistrate without his consent. Later, Perkins moved to disqualify the district judge for bias, and a different district judge denied the motion. Ultimately, the district court dismissed all of Perkins's claims as frivolous. Perkins

¹ (...continued)
2018), *report and recommendation adopted*, 2018 WL 1898402 (W.D. Tex. Mar. 7, 2018); *Perkins v. Brewster*, 2018 WL 4323948, at *1 (W.D. Tex. Sept. 7, 2018), *aff'd sub nom. Perkins v. Ivey*, 772 F. App'x 245 (5th Cir. 2019) (per curiam).

² *Perkins v. Hernandez*, 1:18-CV-201-RP (W.D. Tex. July 20, 2019).

³ *Perkins v. State*, 2016 WL 4272109 (Tex. App.—Austin Aug. 11, 2016, pet. denied); *Perkins v. State*, 2016 WL 691265 (Tex. App.—Austin Feb. 19, 2016, pet. denied); *Perkins v. State*, 2015 WL 3941572 (Tex. App.—Austin June 25, 2015).

appeals that dismissal, the order granting defendants' motion for a [± 3] more definite statement, and the denial of the motion to disqualify the district judge.

What we told Perkins last year resolves the merits of this year's appeal: "Perkins violated [the Texas Transportation Code] according to [its] plain meaning. And his counter -argument that he is not governed by the statutes is unconvincing." *Perkins*, 772 F. App'x at 246-47. It is as true now as it was then that one need not "consent" to the Transportation Code to be bound by it. *Id.*

Perkins's procedural complaints are just as frivolous. The district court did not transfer anything in this case to a magistrate judge. In any event, we previously explained that the common practice of having magistrate judges submit proposed findings to district judges is lawful. *Perkins*, 772 F. App'x at 246.

The district court did not abuse its discretion by granting the motion for a more definite statement. It is hard to see what, if any, harm Perkins suffered by the grant of this motion— he did not oppose the motion when it was filed, and he filed an amended complaint afterwards. *See Mitchell v. E-Z Way Towers, Inc.*, 269 F.2d 126, 132 (5th Cir. 1959) (noting that any incorrect order for a more definite statement "becomes immaterial after it has been complied with"). Even if he can challenge the ruling, it was no abuse of discretion. If the allegations ended up being frivolous even after Perkins added allegations, then how can it have been improper to require more detail on the original complaint? If anything, it gave Perkins a second chance to state

valid claims.

Neither did the district court abuse its discretion in denying Perkins's motion to disqualify the presiding judge. Perkins's complaint about the judge appears related the judge's referral of previous matters to a magistrate judge. Neither that nor anything else in the record demonstrates anything close to [4] the "impartiality" or "personal bias" that warrant disqualification. See 28 U.S.C. §§ 144, 455.

The judgment is AFFIRMED. [5]

CORRECTED

**United States Court of Appeals
for the Fifth Circuit**

United States Court of Appeals
for the Fifth Circuit

FILED

April 13, 2021

Lyle W. Cayce

Clerk

No. 20-50678

WESLEY PERKINS,

Plaintiff—Appellant,

versus

EXECUTIVE DIRECTOR WHITNEY BREWSTER, TEXAS
DEPARTMENT OF MOTOR VEHICLES, WHICH
DEPARTMENT IS A PUBLIC CHARITABLE TRUST AND
NON-BENEFICIARY, *Officially and Individually*; CITY

OF AUSTIN, A MUNICIPAL CORPORATION; CITY
ATTORNEY ANNE MORGAN, *Officially and
Individually*; POLICE CHIEF BRIAN MANLEY,
Officially and Individually; J. M. HALLMARK,
ARRESTING OFFICER, *Officially and Individually*;
SOUTHSIDE WRECKER, A COMMERCIAL ENTERPRISE;
JUDGE LEE YEAKEL,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-70

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit
Judges* [1 6]

J U D G M E N T

This cause was considered on the record on
appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the
judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that appellant pay
to appellees the costs on appeal to be taxed by the
Clerk of this Court.

IT IS FURTHER ORDERED that appellee
Southside Wrecker, Incorporated's opposed motion
for attorney fees and costs and opposed motion for
sanctions against Wesley Perkins are GRANTED
and that Southside Wrecker Incorporated is awarded
\$19,933.04 in attorney fees and expenses against
Wesley Perkins. [1 7] [blank] [1 8] [cover letter]

[SEAL] [Cayce attests to true and correct copy]
[dated June 7, 2021]

Rule 14.1(i)(ii)—Additional Orders

USCA5.

APR. 23, 2021. SANCTIONS GRANTED.

Case: 20-50678 Document: 00515835156 Page: 1
Date Filed: 04/23/2021

**United States Court of Appeals
for the Fifth Circuit**

United States Court of Appeals
for the Fifth Circuit

FILED

April 13, 2021

Lyle W. Cayce

Clerk

No. 20-50678

WESLEY PERKINS,

Plaintiff—Appellant,

versus

EXECUTIVE DIRECTOR WHITNEY BREWSTER, TEXAS
DEPARTMENT OF MOTOR VEHICLES, WHICH
DEPARTMENT IS A PUBLIC CHARITABLE TRUST AND
NON-BENEFICIARY, *Officially and Individually*; CITY
OF AUSTIN, A MUNICIPAL CORPORATION; CITY
ATTORNEY ANNE MORGAN, *Officially and
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Officially and Individually; J. M. HALLMARK,
ARRESTING OFFICER, *Officially and Individually*;
SOUTHSIDE WRECKER, A COMMERCIAL ENTERPRISE;

JUDGE LEE YEAKEL,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-70

ORDER:

IT IS ORDERED that the opposed motion of
appellee Southside Wrecker to amend the judgment
is GRANTED. [1 2]

/s/ Gregg Costa

GREGG COSTA

United States Circuit Judge

W.D.Tex.

**MAY 27, 2020. MOTION FOR MORE DEFINITE
STATEMENT GRANTED.**

Case 1:20-cv-00070-RP Document 13 Filed 05/27/20
Page 1 of 1

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

WESLEY PERKINS,

Plaintiff,

v.

§
§
§
§
§

1:20-CV-70-RP

A-8

WHITNEY BREWSTER, §
et al., §
Defendants. §

ORDER

Before this Court is Defendants City of Austin, J. M. Hallmark, Brian Manley, and Anne Morgan's (collectively, "City of Austin Defendants") Motion for More Definite Statement. (Dkt. 11). The City of Austin Defendants filed their motion on May 18, 2020. To date, Plaintiff Wesley Perkins ("Perkins") has not filed a response. Under Local Rule CV-7(e)(2), Perkins's deadline to respond was May 26, 2020. "If there is no response filed within the time period prescribed by this rule, the court may grant the motion as unopposed." Loc. R. W.D. Tex. CV-7(e)(2).

The City of Austin Defendants seek a more definite statement of Perkins's 111-page complaint, (Dkt. 1). (Dkt. 11). Because the motion is unopposed, the Court will grant it. *See* Loc. R. W.D. Tex. CV-7(e)(2).

IT IS ORDERED that Perkins replead and file an amended complaint that addresses the deficiencies outlined in the City of Austin Defendants' Motion for More Definite Statement, (Dkt. 11), on or before **June 10, 2020**. Failure to do so may result in Perkins's claims against the City of Austin Defendants being dismissed. *See* Fed. R. Civ. P. 41(b).

SIGNED on May 27, 2020.

/s/ Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

JUL. 13, 2020. MOTION TO DISQUALIFY DENIED.

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Page 1 of 4

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

WESLEY PERKINS,	§ No. 1:20-CV-0070-OLG
	§
Plaintiff,	§
	§
v.	§
	§
EXECUTIVE DIRECTOR	§
WHITNEY BREWSTER,	§
et al.	§
	§
<u>Defendants.</u>	§

ORDER DENYING MOTION TO DISQUALIFY

Before the Court is a Motion to Disqualify filed by Plaintiff Wes Perkins ("Plaintiff" or "Perkins"). (Dkt. # 43.) On July 9, 2020, this Motion was referred by the Honorable Chief Judge Orlando L. Garcia to the undersigned for determination. (Dkt. # 47.) Pursuant to Local Rule CV-7(h), the Court finds this matter

suitable for disposition without a hearing. After careful consideration, the Court **DENIES** the motion for the following reasons.

BACKGROUND

Plaintiff brings this motion to disqualify the “presently assigned § 451 judge,” which at the time was Judge Robert Pitman. (Dkt. # 43.) Perkins asserts that the Western District of Texas has an “insatiable desire to prohibit ‘trial’ and compel arbitration” and that through “facially illegal referral ‘orders’ ” Judge Lee Yeakel and Judge Pitman “obliterate Structural Due Process.” (*Id.* (emphasis [1 2] omitted).) Plaintiff asserts that he “does not consent to any form of non-judicial decision-making” and that his matter should not be referred “at any time, to any arbiter (a/k/a magistrate).” (*Id.* (emphasis omitted).) In arguing that Judge Pitman should be disqualified, Perkins asserts that Judge Pitman “supports and advances [Judge Yeakel’s] compelled consent, ‘at filing’ ‘referral’ policy.” (*Id.* emphasis omitted). Perkins alleges that Judge Pitman has exercised “non-existent jurisdiction to violate, intentionally, several of Perkins’s rights, the most directly relevant for Disqualification analysis being the right to trial, at all.” (*Id.* emphasis omitted).

LEGAL STANDARD

Under 28 U.S.C. § 144, whenever a party files a timely and sufficient affidavit that the presiding judge has a personal bias or prejudice either for or against said party, such judge shall proceed no further, and another judge shall decide the issue. A judge must be disqualified where “his impartiality

might reasonably be questioned” or where he “has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(a) & (b)(1). Under either § 144 or § 455, “the alleged bias must be personal, as distinguished from judicial in nature.” United States v. Scroggins, 485 F.3d 824, 830 (5th Cir. 2007) (internal citations omitted). A judicial ruling alone “almost never constitute[s] a valid basis for a bias or partiality motion.” United States ex rel Gage v. Davis SR Aviation L.L.C., [13] 658 F. App’x 194, 198-99 (5th Cir. 2016) (internal quotation marks omitted). The alleged bias or prejudice must stem from an extrajudicial source, resulting in an opinion “on some basis other than what the judge learned from his participation in the case,” United States v. MMR Corp., 954 F.2d 1040, 1045-46 (5th Cir. 1992) (quoting United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)), and therefore, a motion to disqualify ordinarily “may not be predicated on the judge’s rulings in the instant case.” Scroggins, 485 F.3d at 830 (internal quotations omitted). The determination of whether disqualification is appropriate is within the sound discretion of the judge. In re Hipp Inc., 5 F.3d 109, 116 (5th Cir. 1993).

ANALYSIS

Plaintiff seeks to disqualify Judge Pitman because “by compelling arbitration” Judge Pitman has “overtly defied Perkins’s right to a trial at all” and thus “rendered himself incapable of providing Perkins a fair and impartial trial.” (Dkt. # 43 (emphasis and internal punctuation marks omitted).) This Court cannot find anywhere in the record an instance where Judge Pitman denied Perkins his right to a trial and demanded arbitration. Upon a

review of the docket, it appears that the litigation remains on-going without having proceeded to any mandatory arbitration. There is a pending motion to dismiss (Dkt #34), a pending motion for more definite statement (Dkt #36), and it appears that Perkins just filed on July 10, 2020, a motion to stay this case "pending resolution of the compelled [± 4] arbitration issue active" in another case 1:20-cv-00296-OLG (Dkt #48). The Court cannot find any support for Perkins's conclusory statement, and it is unlikely that "a reasonable and objective person" would "harbor doubts concerning the judge's impartiality." See Patterson v. Mobil Oil Corp., 335 F.3d 476, 484 (5th Cir. 2003) (quoting In re Chevron U.S.A. Inc., 121 F.3d 163, 165 (5th Cir. 1997)).

CONCLUSION

Having reviewed Plaintiff's motion and the entire record, this Court finds that none of Plaintiff's allegations present a legitimate ground for the disqualification of Judge Pitman under Section 144, Section 455, or subsequent case law. The Court finds that no reasonable person, knowing all the facts and circumstances surrounding these matters, would question Judge Pitman's impartiality or fairness to Plaintiff. Thus, the Court **DENIES** Plaintiff's Motion.

IT IS SO ORDERED.

DATED: San Antonio, Texas, July 13, 2020.

/s/ D Ezra

David Alan Ezra

Senior United States District Judge

JUL. 24, 2020. DISMISSAL.

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Page 1 of 5

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

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-70-RP
	§	
WHITNEY BREWSTER,	§	
et al.,	§	
	§	
Defendants.	§	

ORDER

Plaintiff Wesley Perkins ("Perkins") filed his complaint in this case on January 21, 2020. (Dkt. 1). After Perkins moved to disqualify the undersigned, (Dkt. 43), this case was transferred to the docket of the Honorable Orlando L. Garcia, Chief United States District Judge for the Western District of Texas, (Dkt. 44). Chief Judge Garcia referred Perkins's motion to Senior United States District Judge David A. Ezra, (Dkt. 47), who denied it, (Dkt. 49). Chief Judge Garcia then transferred this case to the undersigned's docket. (Dkt. 50). Having reviewed Perkins's filings so far in this case, the dockets of other cases Perkins has filed, and the relevant law, the Court dismisses Perkins's complaint with

prejudice.

Perkins is proceeding pro se. This case is one of three he has filed in the Western District of Texas this year. See *Perkins v. Mischtian*, No. 1:20-CV-296-RP-ML (W.D. Tex.); *Perkins v. Lipscombe, et al.*, No. 1:20-CV-493-RP (W.D. Tex.). These cases complement the two that he previously filed in the Western District. See *Perkins v. Brewster*, No. 1:17-CV-378-LY, 2018 WL 814250, at *1 (W.D. Tex. Feb. 9, 2018), *report and recommendation adopted*, No. 1:17-CV-378-LY, 2018 WL 1898402 (W.D. Tex. Mar. 7, 2018); *Perkins v. Brewster*, No. 1:17-CV-1173-LY, 2018 WL 4323948, at *1 (W.D. Tex. Sept. 7, 2018), *subsequently aff'd sub nom. Perkins v. Ivey*, 772 F. App'x 245 (5th Cir. 2019) (per curiam). Perkins has also previously filed a habeas case, *Perkins v. Hernandez*, 1:18-CV-201-RP (W.D. Tex.), and [1 2] multiple cases in state court, see *Perkins v. State*, 2016 WL 4272109 (Tex. App.—Austin Aug. 11, 2016, pet. denied); *Perkins v. State*, No. 03-14-733-CR, 2016 WL 691265 (Tex. App.—Austin Feb. 19, 2016, pet. denied); *Perkins v. State*, 2015 WL 3941572 (Tex. App.—Austin June 25, 2015).

In each of these cases, Perkins has advanced similar or identical legal arguments, each of which has repeatedly been deemed not meritorious. In particular, in each of the cases he filed in 2020, he challenges the ability of a district judge to refer a dispositive motion to a magistrate judge for a report and recommendation. (See, e.g., Notice, Dkt. 40; Notice, Dkt. 51). Each of his complaints stems from his arrests “for driving without a license or registration and for operating an untitled and unregistered motor vehicle,” and in each case, he argues that “his vehicle was not engaged in

commercial transportation, and thus was not subject to the requirements of the Texas Transportation Code.” *Perkins*, 772 F. App’x at 245; (see Compl., Dkt. 1). Both strains of argument are without merit. The Fifth Circuit, directly addressing Perkins’s own arguments concerning referrals to magistrate, held that:

District court judges may designate magistrate judges to “submit . . . proposed findings of fact and recommendations for the disposition” of any motion to dismiss.² [Ed. As noted in the cite, *supra*, this footnote is omitted.] Thus Perkins’s first two arguments are directly foreclosed by law. And because his disqualification argument is founded on the mistaken belief that district judges may not delegate certain pretrial matters to magistrate judges for review and recommendation, it fails as well.

Perkins, 772 F. App’x at 246 (citing 28 U.S.C. § 636(b)(1)(B)) (footnote omitted); (see also Order, Dkt. 49). In his filings, Perkins also argues that *Roell v. Withrow*, 538 U.S. 580, 582 (2003), bars referrals under 28 U.S.C. § 636(b)(1)(B). (Notice, Dkt. 40; Notice, Dkt. 51). In *Roell*, the Supreme Court held that a court can infer, from the parties’ “conduct during litigation,” their consent to a magistrate judge conducting “any or all proceedings in a jury or nonjury civil matter” under 28 U.S.C. § 636(c)(1). *Roell* is inapplicable to the cases now before this Court. Perkins’s arguments miss the fundamental distinction between referring all proceedings to a magistrate judge under § 636(c)(1), which indeed requires the parties’ consent (inferred or not), and referring individual motions to a [13] magistrate judge for a report and recommendation under §

636(b)(1). The question of whether Perkins “consents” to a referral under § 636(b)(1), the provision at issue here, is immaterial.

Similarly, multiple courts have held that Perkins’s Texas Transportation Code-related claims, such as those he brings in this case, are meritless. *See, e.g., Perkins*, 772 F. App’x at 246–27 (“Perkins violated these laws according to their plain meaning. And his counter-argument that he is not governed by the statutes is unconvincing.”); *Perkins*, 2018 WL 4323948, at *1–2 (“[T]he entire basis for each of his claims is the oft-rejected argument that he is not required to either have a driver’s license or register his car because he does not consent to be bound by the Texas Transportation Code. This is blatantly incorrect.”); *Perkins*, 2017 WL 814250, at *2;¹ *Perkins*, 2016 WL 4272109, at *2; *Perkins*, 2016 WL 691265 at *1–2; *Perkins*, 2015 WL 3941572, at *2–3.

Perkins is not a prisoner and is not proceeding *in forma pauperis*. The screening provisions of 28 U.S.C. §§ 1915(a) and (e) therefore do not apply here. Nevertheless, district courts have the inherent authority to screen a pleading for frivolousness and may dismiss, sua sponte, claims that are “totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion”

¹ “Leaving aside how non-sensical [the argument that Perkins did not consent to be bound by the Texas Transportation Code] is, the Court’s analysis need go no further than the very first assertion: that to be regulated under the Transportation Code, one must assert ‘commercial consent.’ Because this assertion is incorrect (as numerous courts have told Perkins), the remaining steps in his analysis cannot stand, as they are based on a false premise.”

because such claims lack “the ‘legal plausibility necessary to invoke federal subject matter jurisdiction.’” *Apple v. Glenn*, 183 F.3d 477, 479–80 (6th Cir. 1999) (per curiam) (citing *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974); see also *Dilworth v. Dallas Cty. Cmty. Coll. Dist.*, 81 F.3d 616, 617 (5th Cir. 1996)). This inherent power applies to complaints for which the plaintiff is not a prisoner and has paid a filing fee. *Black v. Hornsby*, No. 5:14-CV-0822, 2014 WL 2535168, at *3 (W.D. La. May 15, 2014), *aff’d sub nom. Black v. Hathaway*, 616 F. App’x 650 (5th Cir. 2015). [4]

The Fifth Circuit has recently affirmed that “[s]ome claims are ‘so insubstantial, implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy.’” *Atakapa Indian de Creole Nation v. Louisiana*, 943 F.3d 1004, 1006 (5th Cir. 2019) (quoting *Oneida Indian Nation of N.Y. v. Oneida Cty.*, 414 U.S. 661, 666 (1974)). Indeed, “[f]ederal courts lack power to entertain these ‘wholly insubstantial and frivolous’ claims.” *Id.* (quoting *Southpark Square Ltd. v. City of Jackson, Miss.*, 565 F.2d 338, 343–44 (5th Cir. 1977)). “Determining whether a claim is ‘wholly insubstantial and frivolous’ requires asking whether it is ‘obviously without merit’ or whether the claim’s ‘unsoundness so clearly results from the previous decisions of [higher courts] as to foreclose the subject.’” *Id.* (quoting *Southpark Square*, 565 F.2d at 342). While here, the Court makes no jurisdictional findings, as the Fifth Circuit arguably did in *Atakapa*, the Court does find that Perkins’s claims—made after repeated admonishments by multiple courts over several years that they are meritless—are insubstantial and frivolous. Perkins’s

choice to proceed in this manner harms both the Court and other litigants:

Federal courts are proper forums for the resolution of serious and substantial federal claims. They are frequently the last, and sometimes the only, resort for those who are oppressed by the denial of the rights given them by the Constitution and laws of the United States. Fulfilling this mission and the other jurisdiction conferred by acts of Congress has imposed on the federal courts a work load that taxes their capacity. Each litigant who improperly seeks federal judicial relief for a petty claim forces other litigants with more serious claims to await a day in court. When litigants improperly invoke the aid of a federal court to redress what is patently a trifling claim, the district court should not attempt to ascertain who was right or who was wrong in provoking the quarrel but should dispatch the matter quickly.

Raymon v. Alvord Indep. Sch. Dist., 639 F.2d 257, 257 (5th Cir. Unit A 1981).

Because the Court finds that Perkins's claims are frivolous, the Court invokes its inherent authority and **ORDERS** that Perkins's complaint, (Dkt. 1), is **DISMISSED WITH PREJUDICE** as frivolous. The Court will enter final judgment in a separate order.

[4]

IT IS FURTHER ORDERED that Perkins is warned that filing or pursuing any further frivolous lawsuits may result in (1) the imposition of court costs under 28 U.S.C. § 1915(f); (2) the imposition of significant monetary sanctions under Fed. R. Civ. P. 11; (3) the imposition of an order barring him from filing any lawsuits in this Court without first

obtaining the permission from a District Judge of this Court or a Circuit Judge of the Fifth Circuit; or (4) the imposition of an order imposing some combination of these sanctions.

SIGNED on July 24, 2020.

/s/ Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

JUL. 24, 2020. FINAL JUDGMENT.

Case 1:20-cv-00070-RP Document 57 Filed 07/24/20
Page 1 of 1

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

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-70-RP
	§	
WHITNEY BREWSTER,	§	
et al.,	§	
	§	
Defendants.	§	

FINAL JUDGMENT

On July 24, 2020, the Court dismissed Plaintiff Wesley Perkins's complaint, (Dkt. 1), with prejudice as frivolous. As nothing remains to resolve, the Court

enters final judgment under Federal Rule of Civil Procedure 58.

IT IS ORDERED that this case is **CLOSED**.

IT IS FURTHER ORDERED that all pending motions are **MOOT**.

IT IS FINALLY ORDERED that all parties shall bear their own costs.

SIGNED on July 24, 2020.

/s/ Robert Pitman

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE

Rule 14.1(i)(iii)—Rehearing

None.

Rule 14.1(i)(iv)—Judgment of Different Date

Apr. 13, 2021. Orig. Judgment.

[Ed. Perkins has found no textual differences in the ruling / opinion, itself.]

**United States Court of Appeals
for the Fifth Circuit**

United States Court of Appeals
for the Fifth Circuit

FILED

April 13, 2021

Lyle W. Cayce

Clerk

WESLEY PERKINS,

Plaintiff—Appellant,

versus

EXECUTIVE DIRECTOR WHITNEY BREWSTER, TEXAS
DEPARTMENT OF MOTOR VEHICLES, WHICH
DEPARTMENT IS A PUBLIC CHARITABLE TRUST AND
NON-BENEFICIARY, *Officially and Individually*; CITY
OF AUSTIN, A MUNICIPAL CORPORATION; CITY
ATTORNEY ANNE MORGAN, *Officially and
Individually*; POLICE CHIEF BRIAN MANLEY,
Officially and Individually; J. M. HALLMARK,
ARRESTING OFFICER, *Officially and Individually*;
SOUTHSIDE WRECKER, A COMMERCIAL ENTERPRISE;
JUDGE LEE YEAKEL,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-70

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit
Judges* [1 2]

J U D G M E N T

This cause was considered on the record on
appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the
judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that appellant pay
to appellees the costs on appeal to be taxed by the

Clerk of this Court.

Rule 14.1(i)(v)—Statutes

TEX. TRANSP. CODE § 502.001(45) (“vehicle”).

“**Vehicle**” means a device in or by which a person or property is or may be transported or drawn [i.e., towed] on a public highway

28 U.S.C.A. § 636(b)(1)(A).

(b)(1) Notwithstanding any provision of law to the contrary,

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, *except* a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action.

Pub. L. No. 94-577, 90 Stat. 2729 (Oct. 21, 1976)
(*emphasis* added).

28 U.S.C.A. § 636(c) (in relevant part).

§ 636(c)(1) "Upon the consent of the parties." ...
"Upon the consent of the parties."

§ 636(c)(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of the court shall, at the time the action is filed, notify the parties **of the availability of a magistrate judge** to exercise such jurisdiction. **The decision of the parties shall be communicated to the clerk of the court.** Thereafter, either the district court judge or the magistrate judge may again advise the parties **of the availability of the magistrate judge**, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. *Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.*

28 U.S.C.A. § 636(c)(1), (c)(2) (all emphasis added).

Regarding 28 U.S.C.A. § 455(a), it's not a matter of construction but rather of application.

Rule 14.1(i)(vi)—Additional materials

Reference to the Record(s) will suffice. *See also* Appendix B.

See also Exs. H, J (this Record), ROA.164-65 (County court rulings confirming *validity* of "no commercial nexus" defense) (TAYLOR's case).

Appendix B (from No. 1:20-CV-296)

Rule 14.1(i)(ii)—Additional Orders

Apr. 8, 2020. YEAKEl's "at filing" referral
"order."

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

FILED
2020 APR -8 PM 3: 02
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
By /s/ LO [?]

Deputy

WES PERKINS, §
PLAINTIFF, §
§
V. §
§
JOHN MISCHTIAN, §
JUDGE COUNTY COURT §
AT LAW 2, BELL COUNTY, §
TEXAS, OFFICIALLY AND §
INDIVIDUALLY, AND §
BELL COUNTY, TEXAS, §
DEFENDANTS. §

CAUSE NO.
1:20-CV-296

ORDER

IT IS HEREBY ORDERED that all pending and future nondispositive motions in this case are **REFERRED** to United States Magistrate Mark Lane for resolution. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App. C, R. 1(c).

IT IS FURTHER ORDERED that all pending and future dispositive motions are **REFERRED** to United States Magistrate Judge Mark Lane for Report and Recommendation. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App. C, R. 1(d).

SIGNED this 8th day of April, 2020.

/s/ Lee Yeakel
LEE YEAKEL
UNITED STATES DISTRICT JUDGE

Jun. 24, 2020. Participation by the un-consented-
to arbiter (magistrate).

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

WES PERKINS	§	
Plaintiff,	§	
V.	§	NO. 1:20-cv-296
	§	-RP-LY

B-2

JOHN MISCHTIAN, §
COUNTY COURT AT LAW §
2, BELL COUNTY, TEXAS, §
OFFICIALLY AND §
INDIVIDUALLY, AND §
BELL COUNTY, TEXAS, §
Defendants. §

ORDER

Before the court is Wes Perkins's ("Perkins") Motion to Withdraw Yeakel's Illegal Referral Order (Dkt. #8). Perkins appears to object to the District Court's referral of dispositive matters in the above-styled case to the Magistrate Court. Dkt. #8. Perkins is correct that 28 U.S.C. § 636(b)(1)(A) permits district court judges to designate magistrate judges to "hear and determine" nondispositive pretrial matters. However, 28 U.S.C. § 636(b)(1)(B) permits district court judges to designate magistrate judges to "submit ... proposed findings of fact and recommendations" concerning dispositive pretrial matters. *See also* W.D. Tex. Loc. R., App'x C, r. 1(c)-(d). Moreover, while Perkins makes it plain that he does not consent to a magistrate judge, such non-consent does not prevent the undersigned from performing the tasks outlined in the above two statutes. *See* 28 U.S.C. § 636(c)(1); *see also* W.D. Tex. Loc. R., App'x C, r. 1(i). Accordingly, Perkins objections are not well-founded, and his Motion to Withdraw is **DENIED**. Dkt. #8.

SIGNED June 24, 2020.

/s/ M L
MARK LANE
UNITED STATES MAGISTRATE JUDGE

Jun. 30, 2020. Motion to withdraw referral
"order" denied; Motion to strike participation by un-
consented-to arbiter denied.

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

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity,</i> and BELL COUNTY,	§	
TEXAS,	§	
	§	
Defendants.	§	

ORDER

On June 15, 2020, Perkins filed a motion to withdraw the District Court's referral order, which referred all pretrial matters in this case to Judge Lane. (Mot. Withdraw, Dkt. 8). Perkins specifically objected to the District Court's referral of all pending and future dispositive matters to Judge Lane for report and recommendation. (*Id.* at 2; *see also* Order, Dkt. 4, at 1). Judge Lane denied Perkins's motion, explaining that 28 U.S.C. § 636(b)(1)(B) permits district court judges to designate magistrate judges

to “submit ... proposed findings of fact and recommendations” concerning dispositive pretrial matters, whether or not the parties consent. *See also* W.D. Tex. Loc. R., App’x C, r. 1 (c)-(d). (Order, Dkt. 10, at 1). Perkins now moves to strike Judge Lane’s order, which the Court construes as an appeal. (Mot. Strike, Dkt. 11). Having considered Perkins’s motion, the law, and the record in this case, the Court will deny the motion.

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 [1 2] 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)).

Having reviewed Judge Lane’s order, the Court finds no clear error. As Judge Lane rightly notes, under 28 U.S.C. § 636(b)(1)(B), the District Court

may designate a magistrate judge to "submit ... proposed findings of fact and recommendations" concerning dispositive pretrial matters.¹ (Order, Dkt. 10, at 1). The Court understands that Perkins does not consent to the referral in this case. Mot. Strike, Dkt. 11, at 2). But Perkins's decision not to consent has no bearing at all on the District Court's decision to make a referral. While a magistrate judge may not decide case-dispositive motions without the parties' consent, a magistrate judge may, on a district court judge's referral, submit a report and recommendation concerning a case-dispositive matter for the District Court's review. *Compare* 28 U.S.C. § 636(b)(1)(B), *with* 28 U.S.C. § 636(c)(1); *see also* W.D. Tex. Loc. R., App'x C, r. 1(i). Perkins's objections to judge Lane's Order are therefore unfounded and the Court will deny his motion.

In reviewing the record in this case, the Court also notes that Perkins has failed to timely serve Defendants Judge John Mischian and Bell County, Texas (together, "Defendants"). "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff— must dismiss the action without prejudice against that defendant [± 3] or order that service be made within a specified time." Fed. R. Civ. P. 4(m). More than 90 days have passed since Perkins filed his complaint.² Thus, the Court will order Perkins to

¹ Should Perkins object to Judge Lane's proposed findings and recommendations, he may timely file specific, written objections and, in doing so, secure de novo review of any dispositive motion by the District Court. 28 U.S.C. § 636(b).

² Perkins filed an amended complaint on June
(continued...)

show cause as to why his claims should not be dismissed for failure to timely serve the Defendants in this case.

Accordingly, the Court **AFFIRMS** Judge Lane's Order denying Perkins's motion to withdraw, (Dkt. 10), and **DENIES** Perkins's motion to strike, (Dkt. 11).

IT IS FURTHER ORDERED that Perkins shall show cause in writing on or before **July 10, 2020**, as to why his claims against Defendants should not be dismissed for failure to timely effectuate service. Failure to do so may result in the dismissal of this action. *See* Fed. R. Civ. P. 41(b) (action may be dismissed for want of prosecution or failure to comply with court order); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (district court has authority to dismiss case for want of prosecution or failure to comply with court order).

SIGNED on June 30, 2020.

/s/ Robert Pitman
ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

² (...continued)
15, 2020, which did not add additional defendants. (Am. Compl., Dkt. 7). Accordingly, Perkins's amended complaint does not extend the deadline by which Perkins must effect service. *See* 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure Civil* § 1137 (4th ed. 2020) ("Filing an amended complaint does not toll the Rule 4(m) service period and thereby provide an additional 90 days for service.").

Jul. 13, 2020. Motion to Disqualify denied.

See A-10.

Jul. 17, 2020. Reasserted Motion to withdraw
referral "order" denied.

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

WESLEY PERKINS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	1:20-CV-296-RP
	§	
JUDGE JOHN MISCHTIAN,	§	
<i>in his individual and official</i>	§	
<i>capacity,</i> and BELL COUNTY,	§	
TEXAS,	§	
	§	
Defendants.	§	

ORDER

On June 15, 2020, Perkins filed a motion to withdraw the District Court's referral order, which referred all pretrial matters in this case to Judge Lane. (Mot. Withdraw, Dkt. 8). Perkins specifically objected to the District Court's referral of all pending

and future dispositive matters to Judge Lane for report and recommendation. (*Id.* at 2; *see also* Order, Dkt. 4, at 1). Judge Lane denied Perkins's motion, explaining that 28 U.S.C. 636(b)(1)(B) permits district court judges to designate magistrate judges to "submit... proposed findings of fact and recommendations" concerning dispositive pretrial matters, whether or not the parties consent. *See also* W.D. Tex. Loc. R., App'x C, r. 1(c)-(d). (Order, Dkt. 10, at 1). Perkins then moved to strike Judge Lane's order, which the Court construed as an appeal. (Order, Dkt. 12, at 1). The Court affirmed Judge Lane's order and denied Perkins's motion to strike. (*Id.* at 3). Perkins now brings a second motion to withdraw the "illegal referral order" to judge Lane. (2nd Mot. Withdraw, Dkt. 16, at 2).

Perkins's second motion to withdraw the referral order in this case raises the same argument he raised in his prior motion, specifically that the District Court judge lacked authority to refer all pretrial matters in this case to judge Lane without his consent. (*Compare id.*, with Mot. Withdraw, Dkt. 8). As this Court explained to Perkins in its two previous orders, District Court judges may [1 2] designate a magistrate judge to "submit ... proposed findings of fact and recommendations" concerning dispositive pretrial matters, with or without Perkins's consent. 28 U.S.C. § 636(b)(1)(B); (*See* Order, Dkt. 10, at 1; Order, Dkt. 12, at 2). Perkins's objection to the referral order in this case is unfounded and the court will once more deny his motion.

The court reminds Perkins that the Fifth circuit's directly applicable opinion in *Perkins v. Ivy*, 772 F. App'x 245, 246 (5th Cir. 2019) bars this very argument. Should Perkins continue to knowingly

advance duplicative legal arguments, he is warned that he may face sanctions up to and including being barred from commencing litigation in the Western District without advance permission from a judge.

Accordingly, **IT IS ORDERED** that Perkins's motion to withdraw the magistrate referral in this case, (Dkt. 16), is **DENIED**.

SIGNED on July 17, 2020.

/s/ Robert Pitman

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE