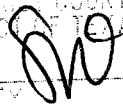


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2020 JAN -9 AM 10:30

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
DEPUTY 

MAX ENGERT, JACK PURCHASE,  
AND RONALD ATKINSON, ON  
BEHALF OF THEMSELVES AND ALL  
OTHERS SIMILARLY SITUATED,  
PLAINTIFFS,

§  
§  
§  
§  
§

V.

§

CAUSE NO. 1:19-CV-183-LY

§

QUINCY BIOSCIENCE, LLC,  
DEFENDANT.

§  
§

**ORDER ON REPORT AND RECOMMENDATION**

Before the court are Defendant Quincy Bioscience, LLC's Motion to Dismiss Plaintiffs' First Amended Class Action Complaint filed June 21, 2019 (Doc. #22); Plaintiffs' Response to Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint filed July 12, 2019 (Doc. #24); and Defendant Quincy Bioscience, LLC's Reply filed July 26, 2019 (Doc. #27). The motion, response, and reply were referred to the United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W. D. Tex. Appx. C, 1(d).

The magistrate judge filed a Report and Recommendation on October 8, 2019 (Doc. #30), recommending that this court deny the motion to dismiss. Defendant Quincy Bioscience, LLC's Objections to the Report and Recommendation of the United States Magistrate Judge on its Motion to Dismiss Plaintiffs' First Amended Class Action Complaint were filed October 22, 2019 (Doc. #31). Plaintiff's Response to Defendant's Objections to the Report and Recommendations of the United States Magistrate Judge was filed November 5, 2019 (Doc. #32). In light of the objections, the court has undertaken a *de novo* review of the entire case file and finds that the Report and Recommendation should be accepted and approved for substantially the reasons stated therein.

In its objections, Defendant Quincy Bioscience, LLC asserts that the magistrate judge improperly refused to consider the Madison Memory Study, which Quincy argues conclusively demonstrates that Quincy's marketing statements were both truthful and fully substantiated, thereby rendering Plaintiffs' false-advertising claims wholly without merit. The court concludes, however, that the magistrate judge properly limited her review on the motion to dismiss to Plaintiffs' amended complaint and attachments, which did not include the Madison Memory Study. Therefore, the court will overrule Quincy's objections.

**IT IS THEREFORE ORDERED** that Defendant Quincy Bioscience, LLC's Objections to the Report and Recommendation of the United States Magistrate Judge on its Motion to Dismiss Plaintiffs' First Amended Class Action Complaint was filed October 22, 2019 (Doc. #31) are **OVERRULED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation of the United States Magistrate Judge (Doc. #30) is **APPROVED** and **ACCEPTED** as set forth herein.

**IT IS FURTHER ORDERED** that Defendant Quincy Bioscience, LLC's Motion to Dismiss Plaintiffs' First Amended Class Action Complaint filed June 21, 2019 (Doc. #22) is **DENIED**.

SIGNED this 9<sup>th</sup> day of January, 2020.

  
\_\_\_\_\_  
LEE YEAKEL  
UNITED STATES DISTRICT JUDGE