IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CRAIG CUNNINGHAM,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil No. 4:20-cv-144-SDJ-KPJ**
	§	
BRITEREAL MANAGEMENT, INC., *et al.*,	§	
	§	
	§	
Defendants.		

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is Defendants Britereal Management, Inc. ("Britereal") and Anna Yeh's ("Yeh") (collectively, "Defendants") Motion to Dismiss (the "Motion") (Dkt. 8). On April 23, 2020, Plaintiff Craig Cunningham ("Plaintiff") filed a response (Dkt. 9). Upon consideration of the pleadings and applicable authorities, the Court recommends Defendants' Motion (Dkt. 8) be **GRANTED IN PART** and **DENIED IN PART**.

I. BACKGROUND

On February 26, 2020, Plaintiff filed his Complaint, asserting claims against Defendants for violations of the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. §§ 227(b) and (c), and Texas Business and Commerce Code § 305.053. *See* Dkt. 1 at 9–11. Plaintiff alleges "[t]his case relates to calls placed selling supplements via illegal text messages." *Id.* at 5. He alleges his cell phone number, ending in 7262, received at least twenty-five (25) calls "from a variety of spoofed caller ID's," all containing a pre-recorded message. *See id.* at 5–6, 8. Plaintiff claims he

received text messages soliciting him to purchase a product named "Bio Virexagen." *Id.* at 6.[1] Plaintiff further claims that his number "is on the national do-not-call list," he "never consented to receiving automated calls or calls with pre-recorded messages," and "no emergency necessitated the calls." *See id.* Plaintiff alleges Defendants did not "train [their] agents engaged in telemarketing on the existence and use of any do-not-call list." *Id.* at 7. Plaintiff attached an exhibit to the Complaint, which depicts an email confirmation message. *See* Dkt. 1-1. The email asks Plaintiff to confirm his Bio Virexagen order details so that his "new Insta Testo Boost" is sent to the correct address. *Id.*[2]

Plaintiff enumerates several injuries, such as nuisance, invasion of privacy, trespass of his cell phone, intrusion into Plaintiff's seclusion, reduced device storage space, loss of time, and annoyance. *See id.* at 7–8. Plaintiff seeks damages for each violation of TCPA Section 227(b), damages for each violation of TCPA Section 227(c), damages for each violation of Texas Business and Commerce Code Section 305.053, and injunctive relief. *See id.* at 9–12.

On March 31, 2020, Defendants filed the Motion to Dismiss (the "Motion") (Dkt. 8), asserting two grounds for dismissal. First, Defendants argue that, under Federal Rule of Civil Procedure 12(b)(1), the Court lacks subject-matter jurisdiction because Plaintiff does not have standing. *See* Dkt. 8 at 2–6. Second, Defendants argue that, under Rule 12(b)(6), Plaintiff fails to state a claim under TCPA Sections 227(b) and (c) and Texas Business and Commerce Code

[1] There is a spelling discrepancy between Plaintiff's Complaint and the exhibit attending it. *Compare* Dkt. 1 at 6 ("Bio-Viraxegan") *with* Dkt. 1-1 ("Bio Virexagen"). The Court uses the exhibit's spelling, as it is likely the product's "official" name. Additionally, Plaintiff does not identify whether the text messages were sent to the same number as the one receiving the telemarketing calls. Because the Court must view the allegations in the light most favorable to Plaintiff pursuant to Federal Rule of Civil Procedure 12(b)(6), *see Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996), the Court will assume the 7262 number received both the alleged calls and text messages.

[2] Notably, the email is directed to a phone number ending in 1977, not 7262. *Compare* Dkt. 1 at 6 *with* Dkt. 1-1.

Section 305.053. *See id.* at 6–15. On April 23, 2020, Plaintiff filed a response. *See* Dkt. 9. Defendants did not file a reply.

II. LEGAL STANDARD

A. RULE 12(B)(1) AND STANDING

A party may seek dismissal in a pretrial motion based on any of the defenses set out in Rule 12(b) of the Federal Rules of Civil Procedure. FED. R. CIV. P. 12(b); *see also Albany Ins. Co. v. Almacenadora Somex, S.A.*, 5 F.3d 907, 909 (5th Cir. 1993). Dismissal for lack of Article III standing is brought under Rule 12(b)(1). *See Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 n.2 (5th Cir. 2011) (citing *Blanchard 1986, Ltd. v. Park Plantation, LLC*, 553 F.3d 405, 409 (5th Cir. 2008)).[3]

Article III standing—also called constitutional standing—is a "threshold jurisdictional question" in any federal lawsuit. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998). To establish Article III standing, a plaintiff must show, at a minimum, that he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *See Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)).

[3] To clarify, there are two "strands" of standing: Article III standing and prudential standing. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004). Article III standing, also called constitutional standing, "enforces the Constitution's case-or-controversy requirement." *Servicios Azucareros de Venezi, C.A. v. John Deere Thibodeaux, Inc.*, 702 F.3d 794, 801 (5th Cir. 2012) (citations omitted). Prudential standing, also called statutory standing, "embodies judicially self-imposed limits on the exercise of federal jurisdiction." *Id.* Dismissals for lack of constitutional standing are brought under Rule 12(b)(1) for lack of subject-matter jurisdiction; dismissals for lack of prudential standing are brought under Rule 12(b)(6) for failure to state a claim. *See Harold H. Huggins Realty*, 634 F.3d at 795 n.2 (5th Cir. 2011). In the Motion, Defendants do not specify the standing challenge they assert. Because Defendants argue standing under Rule 12(b)(1), the Court will analyze the Motion under the legal standard for Article III standing. *See* Dkt. 8 at 2.

When a defendant challenges a plaintiff's Article III standing solely on the complaint, the plaintiff is protected by safeguards similar to a Rule 12(b)(6) motion to dismiss for failure to state a claim. *See Williamson v. Tucker*, 645 F.2d 404, 412 (5th Cir. 1981). That is, the court must treat the factual allegations in the complaint as true. *Id.*

However, when the defendant challenges Article III standing by introducing facts outside of the complaint, the district court has more latitude with respect to disputed facts: "It is elementary that a district court has broader power to decide its own right to hear the case than it has when the merits of the case are reached. Jurisdictional issues are for the court—not a jury—to decide." *Id.* at 413. Accordingly, if the defendant introduces disputed facts relating to subject-matter jurisdiction, the district court has the power to resolve them. *See Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008) (citation omitted). But in resolving factual disputes, the U.S. Supreme Court has directed the Court to be mindful that, at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan*, 504 U.S. at 561 (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)). The Court must presume that "general allegations embrace those specific facts that are necessary to support the claim." *Id.*

B. RULE 12(B)(6)

When evaluating a Rule 12(b)(6) motion, the Court must accept as true all well-pleaded facts contained in the plaintiff's complaint and view them in the light most favorable to the plaintiff. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). A claim will survive an attack under Rule 12(b)(6) if it "may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007). In other words, a claim may not be dismissed based solely on a court's supposition that the pleader is unlikely "to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder."

Id. at 563 n.8. However, courts are "not bound to accept as true a legal conclusion couched as a factual allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555).

Thus, when considering a motion to dismiss for failure to state a claim, the court's review is limited to the complaint, any document attached to the complaint, and any document attached to the motion to dismiss that is central to the claim and referenced by the complaint. *See Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) (citing *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498–99 (5th Cir. 2000)).

III. ANALYSIS

A. RULE 12(B)(1) AND STANDING

"When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the Court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Upon review of the Complaint and the Motion, the Court finds Plaintiff has alleged sufficient facts to confer Article III standing.

1. Injury in Fact

Plaintiff has alleged an injury in fact. At the pleading stage, a TCPA plaintiff who alleges a defendant placed "multiple harassing calls" that would "annoy or harass a reasonable person" has sufficiently pled an injury in fact. *See Cunningham v. Florio*, No. 4:17-cv-00839-ALM-CAN, 2018 WL 4473792, at *3–4 (E.D. Tex. Aug. 6, 2018), *report and recommendation adopted*, No. 4:17-cv-839, 2018 WL 4473096 (E.D. Tex. Sept. 18, 2018) (finding injury in fact at pleading stage where plaintiff alleged receiving multiple automated calls with automated message); *see also Jamison v. Esurance Ins. Servs., Inc.*, No. 3:15-cv-2484-B, 2016 WL 320646, at *2–3 (N.D. Tex. Jan. 27, 2016) (finding an injury in fact at the pleading stage when plaintiff alleged unwanted calls incurred cell phone charges, reduced her prepaid cell phone time, and invaded her privacy).

Here, Plaintiff alleges Defendants made at least twenty-five (25) calls and sent multiple text messages soliciting him to purchase supplements. *See* Dkt. 1 at 5–6, 8. Plaintiff alleges these communications were made without his consent and for a non-emergency purpose, resulting in injuries of nuisance, invasion of privacy, trespass of his cell phone, intrusion into his seclusion, reduced device storage space, loss of time, annoyance, among others. *See id.* at 6–8. The Court finds these allegations, taken as true, amount to multiple harassing calls that would annoy or harass a reasonable person. Accordingly, on the face of the Complaint, Plaintiff sufficiently alleges an injury in fact under the TCPA.

Defendants argue Plaintiff "seeks out and welcomes automated calls" as a "serial plaintiff." *See* Dkt. 8 at 3, 4. Defendants point to Plaintiff's other TCPA lawsuits—over one hundred (100)—to argue Plaintiff "leverage[es] multiple telephone numbers to bait automated calls." *Id.* at 4; *see also* Dkt. 8-1 (cataloging cases initiated by Plaintiff). Defendants argue that Plaintiff could not have suffered an injury in fact if the calls amount to "TCPA abuse," for "[p]rofessional litigants who maintain multiple phone numbers for the purpose of receiving calls to file TCPA lawsuits lack standing." *Id.* at 3, 6 (citations omitted).

Because Defendants' allegations place Plaintiff's allegations of injury in dispute, the Court has the power to resolve them. *See Lane*, 529 F.3d at 557. Despite Defendants' arguments, the Court nevertheless finds that Plaintiff has sufficiently alleged an injury in fact.

As the Court has previously held, a plaintiff who pursues his rights under the TCPA in other lawsuits does not "negate the existence" of an otherwise "concrete and particularized injury-in-fact based on intrusion upon the litigant's rights to privacy and seclusion." *See Cunningham v. Politi*, No. 4:18-cv-362-ALM-CAN, 2019 WL 2519702, at *2 (E.D. Tex. Apr. 26, 2019), *report and recommendation adopted*, No. 4:18-cv-362, 2019 WL 2526536 (E.D. Tex. June 19, 2019)

(citation omitted); *see also Cunningham v. Rapid Response Monitoring Servs., Inc.*, 251 F. Supp. 3d 1187, 1195–96 (M.D. Tenn. 2017) (rejecting proposition that a professional plaintiff has forfeited his TCPA rights "because the calls alleged were not truly unwanted"). While the Court acknowledges the existence of Plaintiff's numerous lawsuits, many of which are pending in this District, *see, e.g.*, *Cunningham v. USA Auto Protection LLC*, No. 4:20-cv-00142, Dkt. 1 (E.D. Tex. Feb. 26, 2020), the Complaint's factual allegations contain no facts affirmatively showing Plaintiff welcomed the communications at issue. At this early stage of the litigation, Plaintiff has alleged an injury in fact.

To support their "serial plaintiff" argument, Defendants rely on *Stoops v. Wells Fargo Bank, N.A.*, No. CV 3:15-83, 2016 WL 3566266 (W.D. Pa. June 24, 2016). In *Stoops*, the court issued its opinion at the summary judgment stage, holding the plaintiff lacked standing when she admitted her only purpose in using her cell phones was to receive automated telemarketing calls and file TCPA lawsuits. *Id.* at *12. The court reasoned a plaintiff who invites calls in order to generate TCPA lawsuits cannot suffer an injury in fact. *See id.*

As the Court noted in *Politi*, "*Stoops* is distinguishable from this case given that the plaintiff in that case, *at the summary judgment stage and after discovery*, expressly acknowledged that she only purchased cell phones at issue for the purpose of receiving automated telemarketing calls and subsequently filing TCPA suits." 2019 WL 2519702, at *2 (emphasis original). In *Politi*, the Court held that advancing the serial plaintiff argument at the motion to dismiss stage was "premature," particularly when the complaint lacks factual allegations affirmatively showing the plaintiff is a serial plaintiff. *Id.* The logic of *Politi* applies here. Plaintiff has sufficiently alleged an injury in fact in his Complaint.

2. Traceability

Plaintiff has alleged a fairly traceable connection between both Defendants' conduct and his injury. Traceability requires a "causal connection between the injury and the conduct complained of." *Lujan*, 504 U.S. at 560. This element of Article III standing asks whether the line of causation between the injury and the defendant's conduct is "too attenuated." *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1385 (5th Cir. 1986) (quoting *Allen v. Wright*, 468 U.S. 737, 752 (1984)). Under the TCPA, alleging a defendant has contacted the plaintiff with a pre-recorded message will satisfy the traceability requirement. *See Drake v. FirstKey Homes, LLC*, 439 F. Supp. 3d 1313, 1324 (N.D. Ga. 2020).

With respect to Britereal, Plaintiff alleges he received multiple calls and texts with pre-recorded messages. *See* Dkt. 1 at 6. Plaintiff alleges these communications solicited him to purchase Bio Virexagen. *Id.* He further alleges he identified Britereal as an entity that sells Bio Virexagen. *Id.* After considering these allegations and "embrac[ing] those specifics that are necessary to support" them, the Court can draw a direct, causal connection between Britereal's alleged conduct and Plaintiff's injury. *Lujan*, 504 U.S. at 561. From these allegations, Britereal's alleged conduct is fairly traceable to Plaintiff's alleged injuries.

As for Yeh, Plaintiff asserts two primary allegations about her. First, Plaintiff alleges Yeh is a registered agent who can receive service of process on behalf of Britereal. *See* Dkt. 1 at 1. Second, Plaintiff alleges Yeh can be served as an individual at the same address as Britereal's. *See id.* In the remainder of the Complaint, Yeh is only implicitly discussed under the umbrella term, "Defendants." *See, e.g.*, Dkt. 1 at 6. This cursory discussion of Yeh gives the Court pause. At first blush, the line of causation between a registered agent who can receive service of process and the actual placement of telemarketing communications appears too attenuated to be considered fairly

traceable. However, the Court must presume that "general allegations [will] embrace those specific facts that are necessary to support the claim." *Lujan*, 504 U.S. at 561. Thus, it could be that, in the case of a small business employing few personnel, Yeh's connection to the telemarketing communications becomes less attenuated. That is, it could be that Yeh's role in Britereal is much more significant than an individual who simply receives service of process. From this presumption, the Court finds, for purposes of the present Motion, Yeh's conduct is fairly traceable to Plaintiff's injury. *See also Drake*, 439 F. Supp. 3d at 1324 ("So long as the defendants have engaged in conduct that may have contributed to causing the injury, it would be better to recognize standing or to deny it on grounds apart from causation.") (quoting 13A RICHARD D. FREER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 3531.5 (3d ed.)).

Thus, on the face of the Complaint, Plaintiff has alleged a fairly traceable connection between his alleged injuries and Defendants' conduct.

3. Redressability

Lastly, Plaintiff's allegations satisfy Article III's redressability requirement. Redressability requires a plaintiff to show an injury will likely be redressed by a favorable decision. *See Spokeo*, 136 S. Ct. at 1543. The availability of statutory damages shows a TCPA plaintiff's injury is redressable. *See Ung v. Univ. Acceptance Corp.*, 198 F. Supp. 3d 1036, 1039 (D. Minn. 2016). Here, Plaintiff seeks monetary damages under the TCPA. Plaintiff has established redressability. Overall, Plaintiff has standing to sue Defendants.

B. FAILURE TO STATE A CLAIM UNDER TCPA SECTION 227(B)

In a TCPA action, a plaintiff "is expected to plead sufficient facts relating to the calls he claims to have received on his own phone to raise a reasonable expectation that discovery will reveal evidence of the necessary claims or elements." *Florio*, 2018 WL 4473792, at *13. The

allegations must provide the defendant sufficient notice of the claims against it, such that the defendant can "determine whether it or its agents *ever* called a telephone belonging to [the plaintiff]." *Augustin v. Santander Consumer USA, Inc.*, 43 F. Supp. 3d 1251, 1253 (M.D. Fla. 2012) (emphasis original). Facts relevant to this determination include the amount of calls received, the approximate date and time they were received, the phone number placing the calls, and the contents of the calls. *See Politi*, 2019 WL 2519702, at *6; *Cunningham v. TechStorm, LLC*, No. 3:16-cv-2879-M, 2017 WL 721079, at *2 (N.D. Tex. Feb. 23, 2017).

Plaintiff alleges he received at least twenty-five (25) phone calls and multiple text messages to his 7262 number. *See* Dkt. 1 at 6. Plaintiff described the contents of these communications and attached an email confirmation from a Bio Virexagen representative. *See id.* 5–6; Dkt. 1-1. Conceivably, with this information, Defendants can search their records for all communications made to Plaintiff's number and adequately determine the nature and content of the alleged communications. The Court concludes Plaintiff has provided Defendants sufficient notice of the claims against them, and discovery could reasonably reveal evidence pertaining to these allegations. *See Florio*, 2018 WL 4473792, at *13.

Defendants contend Plaintiff's Section 227(b) claim should be dismissed for two reasons. First, because the Complaint does not mention when Plaintiff received the alleged calls and texts, "how the text messages are robocalled," and "whether the TCPA was even in effect when these alleged calls/messages or texts were received," Defendants believe they lack sufficient notice over what conduct forms the basis of Plaintiff's claims: "calls, text messages, or both?" Dkt. 8 at 8–9. Second, Defendants argue Plaintiff's "conclusory allegations lump Defendants together." *Id.* at 11. Under Defendants' theory, this "lumping" does not satisfy Rule 12(b)(6)'s pleading requirements and warrants dismissal. *See id.*

Defendants implicitly ask the Court to deviate from its obligation to accept as true all well-pleaded facts contained in the Complaint and view them in the light most favorable to Plaintiff. *Baker*, 75 F.3d at 196. Here, Plaintiff alleges he received both calls and texts. *See* Dkt. 1 at 5–6. For purposes of the present Motion, the Court must accept as true that Plaintiff received both calls and texts. Similarly, the Court must treat Plaintiff's allegations regarding the phone calls and text messages as true. *See id.* So too with the TCPA's effective date. Congress enacted the statute in 1991. Plaintiff initiated this lawsuit in 2020. Viewing Plaintiff's allegations in the light most favorable to him, the Court must conclude the TCPA was in effect when Plaintiff received the communications.

Lastly, Defendants' reliance on *Politi* for their "impermissible lumping" argument oversimplifies the case's reasoning. In *Politi*, the plaintiff asserted TCPA claims against multiple business entities and impermissibly lumped them together in his allegations. 2019 WL 2519702, at *7, n.10. Because the plaintiff did not allege facts to distinguish one entity defendant's conduct from another, dismissal was proper. *See id.*

Here, Plaintiff sued only one entity—Britereal. And Yeh, Britereal's alleged agent, is not another business entity for which Plaintiff must distinguish: "[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute." *See Jackson Five Star Catering, Inc. v. Beason*, No. 10-10010, 2013 WL 5966340, at *4 (E.D. Mich. Nov. 8, 2013 (internal quotations removed) (citations omitted). "If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force." *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415–16 (D. Md. 2011).

Therefore, under Rule 12(b)(6), Plaintiff has sufficiently pled factual allegations under TCPA Section 227(b).

C. FAILURE TO STATE A CLAIM UNDER TCPA SECTION 227(C)

Plaintiff alleges the communications from Defendants violate Section 227(c) as codified by 47 C.F.R. § 64.1200(d). *See* Dkt. 1 at 9–10. Section 227(c) creates a private right of action for "a person who has received more than one telephone call within any 12-month period by or on behalf of the same entity" in violation of the prescribed regulations. 47 U.S.C. § 227(c)(5). The language of 47 C.F.R. § 64.1200(d) provides that "[n]o person or entity shall initiate any call for telemarketing purposes to a *residential telephone subscriber* unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity." (emphasis added).

Taking Section 227(c)(5) and Section 64.1200(d) together, the private right of action created by TCPA Section 227(c)(5) is "limited to redress for violations of the regulations that concern residential telephone subscribers"—not cell phones. *Politi*, 2019 WL 2519702 at *4. Thus, telemarketing calls made to cell phones do not fall under TCPA 227(c)(5)'s purview. *See id.* at *4 (compiling cases).

Because Plaintiff alleges only communications made to his cell phone, he has failed to state a claim under TCPA Section 227(c).

D. FAILURE TO STATE A CLAIM UNDER TEXAS BUSINESS COMMERCE CODE SECTION 305.053

Under Section 305.053, a "person who receives a communication that violates [the TCPA] . . . may bring an action in this state against the person who originates the communication." TEX. BUS. & COM. § 305.053. Because Plaintiff has stated a claim under TCPA Section 227(b), he has also stated a claim under Texas Business Commerce Code Section 305.053.

IV. CONCLUSION AND RECOMMENDATION

For the foregoing reasons, the Court recommends that Defendants' Motion (Dkt. 8) be **GRANTED IN PART** and **DENIED IN PART**.

The Court recommends that Defendant's Motion be **GRANTED** as to Plaintiff's claims under TCPA Section 227(c), as Plaintiff has failed to state a claim.

The Court recommends that Defendant's Motion be **DENIED** as to Plaintiff's claims under TCPA Section 227(b) and Texas Business and Commerce Code Section 305.053.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

A party is entitled to a *de novo* review by the district court of the findings and conclusions contained in this report only if specific objections are made, and failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report shall bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

So ORDERED and SIGNED this 20th day of November, 2020.

KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE