

2013 WL 27851

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United States District Court, D. Oregon.

[Marina RODRIGUEZ](#), Plaintiff,

v.

CENTRAL SCHOOL DISTRICT 13J,
an Oregon [Special District](#), Defendant.

No. 03:12-cv-01223-HU.

|
Jan. 1, 2013.

Attorneys and Law Firms

[John D. Burgess](#), Burgess Callahan LLC, Salem, OR, for Plaintiff.

[Benjamin R. Becker](#), [Haley E. Percell](#), Oregon School Boards Association, Salem, OR, for Defendant.

Opinion

[HERNANDEZ](#), District Judge:

*1 Magistrate Judge Hubel issued a Findings and Recommendation (# 26) on November 14, 2012, in which he recommends the Court grant defendant's motion to dismiss.

Defendant has timely filed objections to the Findings and Recommendation. The matter is now before me pursuant to [28 U.S.C. § 636\(b\)\(1\)](#) and [Federal Rule of Civil Procedure 72\(b\)](#).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. [28 U.S.C. § 636\(b\)\(1\)](#); [Dawson v. Marshall](#), 561 F.3d 930, 932 (9th Cir.2009); [United States v. Reyna-Tapia](#), 328 F.3d 1114, 1121 (9th Cir.2003) (en banc).

Defendant's only objection is to seek clarification of what appears to be a mistake in the Conclusion section of the Findings & Recommendation. In the Discussion section of the Findings & Recommendation, Magistrate Judge Hubel

recommends that all three of plaintiff's hostile environment claims be dismissed, including plaintiff's fifth claim for relief. Findings & Rec. at 14–16. Yet, in the Conclusion section he recommends denying the motion to dismiss as to the fifth claim. I have carefully reviewed the Findings & Recommendation and conclude that the Conclusion's reference to the denial of the motion as to the fifth claim is attributable to the fact that Magistrate Judge Hubel does, in fact, recommend denial of the part of the motion directed to the fifth claim which argued that the claim was deficient for failing to plead exhaustion of Title VII administrative remedies. *Id.* at 3–7. However, in discussing the separate motion directed to the adequacy of the pleading of the three hostile environment claims, Magistrate Judge Hubel recommends dismissing all of those claims, including the fifth claim. It is obvious he meant to dismiss all of the claims and that the Conclusion section mistakenly misstates his recommendation on the fifth claim.

Other than that clarification, there is no basis to modify the Findings and Recommendation. I have also reviewed the pertinent portions of the record *de novo* and find no other errors in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court ADOPTS Magistrate Judge Hubel's Findings and Recommendation [# 26] with the clarification that contrary to what is stated in the Conclusion section of the Findings & Recommendation, Magistrate Judge Hubel actually recommended that the fifth claim for relief be dismissed. Therefore, defendant's motion to dismiss [4] is granted and plaintiff's First, Second, Third, Fourth, Fifth, and Sixth Claims for Relief, as well as her claim for punitive damages, are dismissed. Plaintiff has twenty-one (21) days from the date of this Order to submit an Amended Complaint.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2013 WL 27851