

2020 WL 1678050

Only the Westlaw citation is currently available.
United States District Court, D. Oregon,
Pendleton Division.

Brad ANDREWS, Plaintiff,

v.

TREASURE VALLEY COMMUNITY COLLEGE;
Treasure Valley Community College Nursing
Program; Mendy Stanford, Defendants.

Civ. No. 2:19-cv-01314-SU

|
Signed 03/18/2020

Attorneys and Law Firms

[Shawn E. Logan](#), Logan Law P.C., Ontario, OR, for Plaintiff.

[Haley E. Percell](#), Michael A. Miller, Oregon School Boards Association, Salem, OR, for Defendants.

FINDINGS & RECOMMENDATION

[Patricia Sullivan](#), United States Magistrate Judge

*1 Plaintiff Brad Andrews brings this action against Treasure Valley Community College, the Treasure Valley Community College Nursing Program (collectively the “TVCC Defendants”), and TVCC Nursing Program Director Mendy Stanford, alleging violations of his constitutional due process rights, as well as claims for breach of contract, breach of the duty of good faith and fair dealing, and negligent infliction of emotional distress. This matter comes before the Court on separate Motions to Dismiss for Failure to State a Claim filed by the TVCC Defendants, ECF No. 5, and Stanford, ECF No. 14. The Court heard oral argument on January 27, 2020. ECF No. 19.

For the reasons discussed below, the TVCC Defendants’ Motion should be GRANTED and the claims against the TVCC Defendants should be DISMISSED without prejudice. Stanford’s Motion should be GRANTED and the claims against Stanford should be DISMISSED without prejudice.

LEGAL STANDARD

To survive a motion to dismiss under the federal pleading standards, the complaint must include a short and plain statement of the claim and “contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard ... asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* The court is not required to accept legal conclusions, unsupported by alleged facts, as true. *Id.*

BACKGROUND

Plaintiff Brad Andrews is a military veteran and has been certified as 70% disabled by the Veterans Health Administration due to back injury, [spinal cord injury](#), and anxiety. Compl. ¶ 13. In the spring of 2016, Andrews enrolled in Treasure Valley Community College (“TVCC”), a public community college. *Id.* at ¶ 10. During the 2017 school year, Andrews enrolled in the TVCC nursing program. *Id.* Andrews’s tuition at TVCC was paid for as part of his veteran’s benefits. *Id.* at ¶ 13.

During Andrews’s first year in the TVCC nursing program he was called into the office of program’s director, Mendy Stanford. Stanford told Andrews that the program faculty were recommending that Andrews get a psychological evaluation before being allowed to continue in the nursing program. This recommendation was based on a “feeling” from an unidentified faculty member. Compl. ¶ 11. When Andrews asked why he should be required to submit to a psychological examination, Stanford retracted her statement. *Id.* ¶ 12.

In 2018, the night before final exams for the winter term, Andrews logged on to CANVAS, a student internet portal used by the TVCC Nursing Program for assignments and testing. Compl. ¶ 14. While logged on to CANVAS, Andrews discovered that the upcoming final exam had been made accessible early, apparently by mistake. *Id.* Andrews accidentally accessed the final exam for a period of twenty-six seconds. *Id.* at ¶¶ 14, 16. Defendants initially believed that Andrews had spent a considerable amount of time accessing the exam and had answered several questions, but it was later determined that this was not the case. *Id.* at ¶ 17. Andrews

did not pass along any information about the exam to other students, nor did he report the accidental access to anyone. *Id.* at ¶¶ 14, 15. The following day, the final exam was cancelled, apparently as a result of Andrews’s early access. *Id.* at ¶ 15.

*2 On April 3, 2019, Andrews and his attorney attended a meeting with Stanford and another TVCC administrator, Travis McFetridge. Compl. ¶ 18. Stanford and McFetridge told Andrews that he was being dismissed from the TVCC Nursing Program for violating policy number three and policy number four of the Treasure Valley Nursing Student Handbook. *Id.* at ¶¶ 18-19. The Complaint does not clearly allege what conduct is covered by those policies, nor does it attach a copy of the student handbook, but it generally appears that the policies relate to academic integrity. The alleged violations appear to have been connected to Andrews’s early access to the final exam. In addition to being dismissed from the program, Andrews was given a failing grade for the course. *Id.* at ¶ 23.

In his dismissal letter, Andrews was told that he could file an appeal of his dismissal within ten days through the TVCC student complaint procedures. Compl. ¶ 20. Andrews’s attorney attempted to follow the appeal procedure by emailing Stanford, McFetridge, and another TVCC employee named Anne-Marie Kelso on April 4, 2019. *Id.* at ¶¶ 21, 22. The Complaint alleges that Andrews made “numerous attempts to engage Treasure Valley Community College in the resolving of this issue.” *Id.* at ¶ 22.

On June 13, 2019, Kelso emailed Andrews’s attorney and informed him that Andrews had failed to timely follow the appeal procedures and so had forfeited his appeal. Compl. ¶ 22.

At the time of his dismissal, Andrews was only one semester away from completing his nursing degree. Compl. ¶ 25. The presence of a failing grade prevented Andrews from seeking admission in another nursing program. *Id.* at ¶ 24. On August 16, 2019, Andrews’s grade was changed from a failing grade to a withdrawal. *Id.* at ¶ 26. This action followed.

DISCUSSION

Andrews brings claims against all Defendants under 42 U.S.C. § 1983 for violation of his substantive and procedural due process rights, as well as claims for breach of contract,

breach of the duty of good faith and fair dealing, and negligent infliction of emotional distress (“NIED”).

The TVCC Defendants move to dismiss Andrews’s claims on the basis that he failed to allege sufficient facts to state a claim. The TVCC Defendants also assert that, as agencies of the State of Oregon, they are entitled to immunity under the Eleventh Amendment. Stanford has separately moved to dismiss all claims on the basis that Andrews has failed to state a claim. Stanford has also asserted that she is entitled to qualified immunity.

I. Eleventh Amendment Immunity

The TVCC Defendants argue that, as political arms of the State of Oregon, they are entitled to Eleventh Amendment immunity. “In general, the Eleventh Amendment bars a federal court from hearing claims by a citizen against dependent instrumentalities of the state.” *Cerrato v. San Francisco Cmty. Coll. Dist.*, 26 F.3d 968, 972 (9th Cir. 1994) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 (1984)). “To determine whether a governmental agency is an arm of the state, the following factors must be examined: whether a money judgment would be satisfied out of state funds, whether the entity performs the central governmental functions, whether the entity may sue or be sued, whether the entity has the power to take property in its own name or only in the name of the state, and the corporate status of the entity.” *Mitchell v. Los Angeles Cmty. Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988). To determine these factors, the court looks to the way state law treats the entity. *Id.*

In *Mitchell*, the Ninth Circuit held that a California community college was a dependent entity of the state and entitled to immunity. *Mitchell*, 86 F.2d at 201. In reaching that determination, the court noted that California colleges and universities are subject to full legislative control and that the defendant community college’s budget was paid from the state’s general fund pursuant to a state-calculated formula and that some of the fees charged by the college went back to the state. *Id.* In the present case, the TVCC Defendants present little in the way of argument or evidence concerning these factors.

*3 Nevertheless, courts have previously held that Oregon’s public universities, which historically operated under the Oregon State Board of Higher Education, are “arms of the state” for purposes of the Eleventh Amendment. *See, e.g., Rounds v. Oregon State Bd. of Higher Educ.*, 166 F.3d 1032, 1035 (9th Cir. 1999); *Brainard v. W. Oregon Univ.*, Case

No. 3:17-cv-0253-SI, 2017 WL 1534191, at *3 (D. Or. April 26, 2017). At least one Oregon district court has applied this reasoning to the state’s community colleges. *Solo v. Central Oregon Cmty. Coll.*, No. Civ. 11-6242-HO, 2011 WL 6759566, at *2 (D. Or. 2011) (“Oregon statutory law subjects the community colleges to the jurisdiction of the Board of Higher Education... COCC is therefore an arm of the State of Oregon and immune from suit under the Eleventh Amendment.”).

The statutory scheme of the Oregon educational system has undergone significant changes in recent years, but Oregon’s community college districts now fall under the administration of the state’s Higher Education Coordinating Commission, which is the entity responsible for overseeing Oregon’s public universities and community colleges. *ORS 350.075*; *ORS 341.015*. In substantive terms, this subjects Oregon community colleges to the same sort of state control that led the court in *Solo* to find that the colleges were arms of the State of Oregon and therefore immune to suit.

The Court concludes that, consistent with Ninth Circuit and district court precedent, the TVCC Defendants are “arms of the State of Oregon,” and in the absence of waiver, are immune from suit in federal court under the Eleventh Amendment. Andrews’s claims against the TVCC Defendants should therefore be DISMISSED without prejudice.

II. 42 U.S.C. § 1983 and the Due Process Clause

Andrews alleges claims under 42 U.S.C. § 1983 for deprivation of his procedural and substantive due process rights in violation of the Fourteenth Amendment. Title 42 U.S.C. § 1983 “provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights.” *Conn v. Gabbert*, 526 U.S. 286, 290 (1999). To maintain a claim under § 1983, “a plaintiff must both (1) allege the deprivation of a right secured by the federal Constitution or statutory law, and (2) allege that the deprivation was committed by a person acting under color of state law.” *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

As a preliminary matter, § 1983 generally only permits actions to be brought against *persons*.¹ The Supreme Court has held that states and governmental entities considered “arms of the state” are not “persons” within the meaning of § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 64, 70 (1989).

As discussed in the preceding section, the TVCC Defendants, as a community college, are arms of the State of Oregon and so cannot be considered “persons” for purposes of § 1983 liability. The Court’s discussion will therefore be limited to Stanford as the only individual defendant (and “person” for purposes of the § 1983) named in this action.

The Due Process Clause of the Fourteenth Amendment “forbids the State to deprive any person of life, liberty or property without due process of law.” *Goss v. Lopez*, 419 U.S. 565, 572 (1975). A plaintiff may bring claims challenging the denial of his procedural or substantive due process rights. To succeed on a procedural due process claim, “the plaintiff must establish the existence of (1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; [and] (3) lack of process.” *Shanks v. Dressel*, 540 F.3d 1083, 1090 (9th Cir. 2008) (internal quotation marks and citation omitted). “To sustain a claim for violation of substantive due process, government action must (1) interfere with rights implicit in the concept of ordered liberty; (2) shock the conscience; or (3) be arbitrary in the constitutional sense.” *Keller v. Los Osos Cmty. Servs. Dist.*, 39 F. App’x 581, 583 (9th Cir. 2002) (internal quotation marks and citations omitted, alterations normalized).

A. Existence of a Protected Property Right

*4 “A threshold requirement to a substantive or procedural due process claim is the plaintiff’s showing of a liberty or property interest protected by the Constitution.” *Wedges/Ledges of Cal., Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56, 62 (9th Cir. 1994). In the present case, Andrews alleges that he had a “protected property interest in [his] continued enrollment in a public institution of higher learning,” and that Defendants violated his due process rights when they dismissed him from the program. Compl. ¶¶ 30, 35. Defendants move to dismiss on the basis that no such protected property interest exists and that Andrews’s dismissal from the nursing program did not, therefore, run afoul of the Fourteenth Amendment.

Property interests “are created and their dimensions defined by the existing rules or understandings that stem from an independent source such as state law.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). “[F]ederal constitutional law determines whether the interest rises to the level of a ‘legitimate claim of entitlement’ protected by the

Due Process Clause.” *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9 (1978) (quoting *Roth*, 408 U.S. at 577).

With respect to the creation of a federal right, the Oregon Supreme Court held in 1914 that payment of tuition may form a contract for educational services between a student and the school. *Tate v. N. Pac. Coll.*, 70 Or. 160, 165 (1914); *see also Austin v. Univ. of Oregon*, 925 F.3d 1133, 1139 (9th Cir. 2019) (“We assume, without deciding, that the student athletes have property and liberty interests in their education, scholarships, and reputation as alleged in the complaint.”); *Doe v. Univ. of Oregon*, No 6:17-CV-01103-AA, 2018 WL 1474531, at *11 (D. Or. Mar 26, 2018) (“Plaintiff’s payment of tuition and fees to the University of Oregon, therefore, created a property interest in continued enrollment throughout the period for which he had paid tuition.”); *Brady v. Portland State Univ.*, No. 3:18-cv-01251-HZ, 2019 WL 4045652, at *4 (Aug 23, 2019) (finding that state law may create a property interest in continued enrollment in a graduate program).

The Court must also determine whether, under federal law, “that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause.” *Memphis Light*, 436 U.S. at 9 (internal quotation marks and citation omitted). In *Brady v. Portland State Univ.*, Judge Hernandez recently concluded that a graduate student’s property interest in his continued enrollment rose to the level of legitimate entitlement protected by the Due Process clause, noting that courts in multiple districts have found “property interests in higher education sufficiently important to warrant protection where state law has provided an anchor for the right.” 2019 WL 4045652, at *4 (internal quotation marks and citation omitted).²

Consistent with *Doe* and *Brady*, the Court accepts the existence of a protected property right in Andrews’s continued enrollment as a nursing student at TVCC.

B. Qualified Immunity

Stanford asserts that she is entitled to qualified immunity. A defendant is entitled to qualified immunity if his or her conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The qualified immunity analysis requires a court to address two questions: (1) whether the facts alleged or shown by the plaintiff establish a constitutional violation and (2)

whether the right at issue was clearly established at the time. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The right must have been clearly established at the time of the defendant’s alleged misconduct, so that a reasonable official would have understood that, under the circumstance, what he or she was doing violated that right. *Wilson v. Layne*, 526 U.S. 603, 615 (1999). Courts have discretion in deciding which prong to address first, depending on the circumstances of the case. *Pearson v. Callahan*, 555 U.S. 223, 242-43 (2009).

*5 The Supreme Court has repeatedly admonished courts “not to define clearly established law at a high level of generality.” *Mullenix v. Luna*, ___ U.S. ___, 136 S. Ct. 305, 308 (2015) (internal quotation marks and citation omitted). “The dispositive question is whether the violative nature of particular conduct is clearly established. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition.” *Id.* (internal quotation marks and citation omitted, emphasis in original).

Even if a right is clearly established, qualified immunity protects an official from reasonable mistakes about the legality of his actions. *Wilkins v. City of Oakland*, 350 F.3d 949, 954-55 (9th Cir. 2003). The official is still entitled to qualified immunity if the official “could have believed, ‘reasonably but mistakenly ... that his or her conduct did not violate a clearly established constitutional right.’ ” *Skoog v. Cnty. of Clackamas*, 469 F.3d 1221, 1229 (9th Cir. 2006) (quoting *Jackson v. City of Bremerton*, 268 F.3d 646, 651 (9th Cir. 2001)). “The protection of qualified immunity applies regardless of whether the government official’s error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.” *Pearson*, 555 U.S. at 231 (internal quotation marks and citation omitted). Qualified immunity is meant to protect “all but the plainly incompetent or those who knowingly violate the law.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (internal quotation marks and citation omitted).

As discussed in the preceding section, Andrews has plausibly alleged the existence of a protected property interest in his continued enrollment as a TVCC nursing student. Assuming for the purposes of this motion that Stanford violated Andrews’ substantive and procedural due process rights by her involvement in his dismissal from the program, the question remains as to whether the right was “clearly established” at the time of the challenged acts.

As previously discussed, some courts within this District have recently accepted the existence of a protected property right in

a higher education student's continued enrollment at a public university. *Brady*, 2019 WL 4045652, at *4; *Doe*, 2018 WL 1474531, at *11. But a nearly contemporaneous case from this District highlighted the lack of precedential support for such a property interest: "The parties dispute whether there exists such a precedent here, but the answer is clear: there is no Supreme Court, Ninth Circuit, or Oregon District Court case that, at the time of the events giving rise to this case, clearly establishes the property rights Plaintiffs assert, nor is there any apposite statute establishing the same." *Austin v. Univ. of Oregon*, 205 F. Supp.3d 1214, 1221-22 (D. Or. 2016). The Ninth Circuit has thus far evaded the issue by "assuming without deciding," that the right existed and concluding that no due process violation occurred. *Austin*, 925 F.3d at 1139.

Given the divided state of opinion among the courts of this District and the lack of clear guidance from the Ninth Circuit, it is difficult to see how a reasonable official in Stanford's position would have understood that Andrews had a constitutionally cognizable interest in his continued enrollment. The § 1983 claim against Stanford should therefore be dismissed on the basis of qualified immunity.

III. Breach of Contract

Under Oregon law, to state a claim for breach of contract, a plaintiff "must allege the existence of a contract, its relevant terms, plaintiff's full performance, and lack of breach and defendant's breach resulting in damage to plaintiff." *Slover v. Oregon State Bd. of Clinical Soc. Workers*, 144 Or. App. 565, 570 (1996) (internal quotation marks and citation omitted).

*6 In the present case, Andrews alleges that a contract for college enrollment existed between himself and TVCC, which Andrews alleges TVCC breached the contract by dismissing him from the nursing program. As previously discussed, the TVCC Defendants are entitled to immunity under the Eleventh Amendment.

In addition, the Court notes that Andrews does not clearly allege the relevant terms of the contract, beyond Andrews enrollment in the TVCC Nursing Program. It seems clear that other terms existed, perhaps contained in the student handbook referenced in the Complaint, but the Court can only guess at what those terms might be. In the absence of clear allegations concerning the terms of the contract, Andrews does not allege his own full performance and lack of breach. This claim should therefore be dismissed without prejudice.

IV. Duty of Good Faith and Fair Dealing

Andrews also alleges that the TVCC Defendants breached the duty of good faith and fair dealing. "In general, every contract has an obligation of good faith in its performance and enforcement under the common law." *Klamath Off-Project Water Users, Inc. v. Pacificorp*, 237 Or. App. 434, 445 (2010). "The purpose of that duty is to prohibit improper behavior in the performance and enforcement of contracts, and to ensure that the parties 'will refrain from any act that would have the effect destroying or injuring the right of the other party to receive the fruits of the contract.'" *Id.* (quoting *Iron Horse Eng. v. Nw. Rubber*, 193 Or. App. 402, 421 (2004)). The duty "serves to effectuate the objectively reasonable expectations of the parties," and "focuses on the agreed common purpose and justified expectation of the parties, both of which are intimately related to the parties' manifestations of their purposes and expectations in the express provisions of the contract." *Id.* (internal quotation marks and citations omitted). A party may violate the duty of good faith and fair dealing without also breaching the express provisions of the contract and a claim for breach of the duty may be maintained independent of the express terms of the contract. *Id.* The duty may not, however, " 'contradict an express contractual term, nor otherwise provide a remedy for an unpleasantly motivated act that is expressly permitted by the contract.'" *Id.* (quoting *Zygar v. Johnson*, 169 Or. App. 638, 645 (2000)).

As previously discussed, the TVCC Defendants are entitled to Eleventh Amendment immunity and so this claim must be dismissed. In addition, Andrews does not allege the express terms of the contract and, in the absence of express terms, it is impossible to assess the "purposes and expectations" of the parties in the formation of the contract. Similarly, in the absence of express terms, it is impossible to assess whether the alleged bad acts of the TVCC Defendants were permitted by the terms of the contract. This claim should therefore be dismissed without prejudice.

V. Negligent Infliction of Emotional Distress

A plaintiff may recover for emotional damages in the absence of physical injury "when a defendant negligently causes foreseeable, serious emotional distress and also infringes some other legally protected interest." *Philibert v. Kluser*, 360 Or. 698, 702 (2016). Foreseeability, standing alone, "is insufficient to establish the defendant's liability: there must also be another 'legal source' of liability for the plaintiff to recover emotional damages." *Id.* at 703. "[A] plaintiff may recover for purely psychic injury where the defendant's

conduct infringed some *legally protected interest* apart from causing the claimed distress.” *Tomlinson v. Metro. Pediatrics, LLC*, 275 Or. App. 658, 679 (2015) (internal quotation marks and citation omitted, emphasis in original); *see also Paul v. Providence Health Sys.-Oregon*, 237 Or. App. 584, 593 (2010) (“Negligent infliction of emotional distress may be actionable without physical injury if the negligent conduct infringed on an interest beyond those that are protected under the general obligation to exercise reasonable care to prevent foreseeable harm.”).

*7 The term “legally protected interest” refers to “an independent basis of liability separate from the general duty to avoid foreseeable risk of harm.” *Philips v. Lincoln Cnty. Sch. Dist.*, 161 Or. App. 429, 433 (1999). “The right to recover from such injuries does not arise from infringement of every kind of legally protected interest, but from only those that are of sufficient importance as a matter of public policy to merit protection from emotional impact.” *Philibert*, 360 Or. at 705 (internal quotation marks and citation omitted). The Oregon Supreme Court provided some examples, such as “when another party has a legal duty designed to protect plaintiff against the type of harm which occurred,” like a specific statutory obligation where “the risk, the harm, and the potential plaintiff were all foreseen by the lawmaker.” *Id.* at 705-06. “[A]s a general proposition, legal recognition can come from many sources—statutes, constitutional provisions, regulations, local ordinances, and the historical and evolving common law.” *Id.* at 706 (internal quotation marks and citation omitted).

In the present case, Andrews alleges that he had a legally protected interest in his continued enrollment as a TVCC nursing student and Defendants breached their duty of care when they deprived him of that right without proper procedures. Compl. ¶¶ 48, 49. Defendants move to dismiss on the basis that no such right exists.

As discussed, recent district court decisions have accepted the existence of a legally protected property interest in continued enrollment in a public higher education program. However, it is not necessary for the Court to determine whether that property interest is the sort of right that merits protection from emotional impact as a matter of public policy.

As discussed in the previous sections, the TVCC Defendants’ motion should be granted on the basis of Eleventh Amendment immunity.

As for Stanford, the Court concludes Andrews has failed to sufficiently allege that, as director of the TVCC Nursing Program, Stanford was responsible for providing Andrews with the appeal procedures laid out in the student handbook. Although the Complaint alleges that Stanford was a party to the decision to dismiss Andrews from the nursing program, *see* Compl. ¶¶ 18, 19, 21, it also alleges that TVCC administrator Travis McFetridge made the decision to dismiss Andrews. *Id.* at ¶ 18. When Andrews’s attorney attempted to invoke the appeal procedures, he corresponded with McFetridge and another TVCC employee named Anne-Marie Kelso. *Id.* at ¶ 22. The Complaint appears to allege that it was Kelso, and not Stanford, who ultimately determined “[a]fter discussing this matter with the administration,” that Andrews had not complied with the appeal procedures. *Id.* The Complaint, as currently pleaded, fails to allege that Stanford was responsible for denying Andrews his right to appeal the dismissal.

The Court concludes that Andrews has failed to allege a claim for NIED as to Stanford and Stanford’s motion should be GRANTED and the claim should be DISMISSED without prejudice.

CONCLUSION

The TVCC Defendants’ Motion to Dismiss, ECF No. 5, should be GRANTED and all claims against the TVCC Defendants should be DISMISSED without prejudice. Stanford’s Motion to Dismiss, ECF No. 14, should be GRANTED and the claims against Stanford should likewise be DISMISSED without prejudice.

SCHEDULING ORDER

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due fourteen (14) days from service of the Findings and Recommendation. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

NOTICE

A party’s failure to timely file objections to any of these findings will be considered a waiver of that party’s right to *de novo* consideration of the factual issues addressed herein

and will constitute a waiver of the party's right to review of the findings of fact in any order or judgment entered by a district judge. These Findings and Recommendation are not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to [Rule 4\(a\)\(1\) of the Federal Rules of Appellate Procedure](#) should not be filed until entry of judgment. *8

It is so ORDERED and DATED this 18th day of March, 2020.

All Citations

Slip Copy, 2020 WL 1678050

Footnotes

- 1 As discussed in the parties' briefing, there are certain exceptions to this requirement, such as municipal liability under [Monell v. Dep't of Soc. Servs.](#), 436 U.S. 658 (1978).
- 2 Of note, Judge Hernandez held that the existence of a protected property interest in continued enrollment in an Oregon university was not clearly established at the time of the events giving rise to the claim in *Brady* and so granted qualified immunity in favor of the individual defendants. [Brady v. Portland State Univ.](#), No. 3:18-cv-01251-HZ, 2019 WL 4045652, at *5-6 (Aug. 23, 2019).

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.