

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HEATHER L. KINCAID,

Plaintiff,

No. CV 09-547-ST

v.

OPINION AND ORDER

**WEST COAST LIFE INSURANCE
COMPANY, a Nebraska corporation,**

Defendant.

MOSMAN, J.,

On October 14, 2010, Magistrate Judge Stewart issued her Findings and Recommendation ("F&R") (#62) in the above-captioned case recommending that I deny plaintiff's motion for summary judgment (#22) and defendant's motion for summary judgment (#28). Objections were filed by plaintiff (#66) and defendant (#67). Responses to the objections were filed by plaintiff (#69) and defendant (#68). I granted (#73) defendant's motion (#72) to file a reply to the objections (#74), and I denied (#76) plaintiff's motion (#75) to file a sur-reply.

STANDARD OF REVIEW

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal

conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

DISCUSSION

The parties' objections rehash arguments already rejected by Judge Stewart. Because I agree with Judge Stewart's F&R, I do not readdress these arguments.

CONCLUSION

Upon review, I ADOPT Judge Stewart's F&R (#62) as my own opinion, and I DENY the motions for summary judgment by plaintiff (#22) and defendant (#28).

IT IS SO ORDERED.

DATED this 18th day of January, 2011.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court