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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Albert Walter Kouba,  
Plaintiff,  
vs.  
Renzenberger, Inc.  
Defendant.

No. CV 10-159-TUC-FRZ (GEE)

**ORDER**

Pending before the Court is a Report and Recommendation issued by Magistrate Judge Edmonds. In her Report and Recommendation, Judge Edmonds recommends that the Court enter an Order granting in part and denying in part Defendant’s motion for summary judgment; it also resolves several related miscellaneous motions. As the Court finds that the Report and Recommendation appropriately resolved the motions, the parties’ objections are denied.<sup>1</sup>

Accordingly, IT IS HEREBY ORDERED as follows:

- (1) Magistrate Judge Edmonds’ Report and Recommendation (Doc. 146) is accepted and adopted.

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<sup>1</sup>The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998). To the extent there were objections to some of Judge Edmonds’ discussion of the facts, a review of the underlying record adequately supported her factual determinations.

1 (2) Renzenberger's motions to strike (Docs. 137, 143) are granted; the Clerk of the Court  
2 shall strike Kouba's motion to add an addendum and the addendum (Docs. 135, 136), and  
3 strike Kouba's sur-reply (Doc. 142).

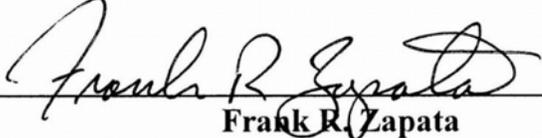
4 (3) Renzenberger's motion for summary judgment and Kouba's motion (Docs. 92 and 131)  
5 are granted in part and denied in part as discussed in the text of the Report and  
6 Recommendation. Renzenberger's motion is granted on the sexual harassment claim and the  
7 wages claim beginning January 1, 2009. Partial summary judgment is granted on the wages  
8 claim before January 1, 2009. Kouba's damages cannot exceed exceed \$1,197, plus interest.  
9 Renzenberger's motion is denied on the on-call claim.

10 (4) Plaintiff's "motion, request for extension of time to read and reply to court's adding  
11 transcripts of deposition to the record" (Doc. 154) is denied. The Clerk of the Court shall  
12 strike Plaintiff's reply (Doc. 155) to transcript from the record. The Court ordered  
13 Renzenberger to file one deposition with the Court to simply allow the Court to look at one  
14 issue raised in an objection in further detail. The Court did not Order the deposition filed to  
15 spawn another few rounds of satellite litigation which would occur if Plaintiff's motion was  
16 granted. As the voluminous record in this case reflects, Plaintiff has had ample opportunity  
17 to oppose Renzenberger's motion for summary judgment in this case. The discovery  
18 deadline and dispositive motion deadline has expired, a Report and Recommendation as to  
19 the dispositive motion was issued several months ago, the parties had an opportunity to  
20 object, the Report and Recommendation has been adopted, and a joint pretrial order and  
21 motions in limine pertaining to trial are due in approximately 30 days. Plaintiff's motion is  
22 denied.

23 (5) The parties shall file a proposed Joint Pretrial Order **on or before 3/9/12**, which shall  
24 include, but not be limited to, that prescribed in the form of Joint Pretrial Order attached.  
25 Any motions in limine shall also be filed on or before **3/9/12**. **As pretrial motions remain**  
26 **to be resolved as the Court expects that the parties will file motions in limine, and**  
27 **Magistrate Judge Edmonds is very familiar with the unique circumstances in this case,**  
28 **this case is referred back to Magistrate Judge Edmonds to issue a Report and**

1 **Recommendation as to any motions in limine (or other pretrial motions).** After the  
2 Court receives the Report and Recommendation, any objections, and issues an Order as to  
3 the Report and Recommendation, the Court will withdraw the reference to Magistrate Judge  
4 Edmonds and issue a final pretrial Order setting dates for trial, the pretrial conference, and  
5 the filing of proposed jury instructions, voir dire and verdict forms.

6  
7 DATED this 6<sup>th</sup> day of February, 2012.

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11 **Frank R. Zapata**  
12 **Senior United States District Judge**  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Plaintiff(s), ) CV \*\*-\*\*\*-TUC-FRZ  
 )  
vs. ) **PROPOSED JOINT PRETRIAL ORDER**  
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\*, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

Pursuant to the Scheduling Order previously entered, following is the proposed Joint Pretrial Order which shall, upon approval of the Court, become the Final Pretrial Order.

**I.**

**IDENTIFICATION OF PARTIES AND COUNSEL**

**II.**

**STATEMENT OF JURISDICTION**

Briefly state the facts and cite the statutes which give this Court jurisdiction.

**III.**

**NATURE OF ACTION**

Provide a concise statement of the type of case, the cause of action, and the relief sought.

**IV.**

**STIPULATIONS AND UNCONTESTED FACTS**

**V.**

**CONTESTED ISSUES OF FACT**

The following are issues of fact to be tried and determined upon trial. Each issue of fact must be stated separately and in specific terms, followed by the parties' contentions as to each issue.

Issue:

Plaintiff(s) contends:

Defendant(s) contends:

**VI.**

**RELEVANT UNCONTESTED ISSUES OF LAW**

(i.e. burdens of proof; standards of review)

## **VII.**

### **RELEVANT CONTESTED ISSUES OF LAW**

The following are issues of law to be tried and determined upon trial. Each issue of law must be stated separately and in specific terms, followed by the parties' contentions as to each issue.

Issue:

Plaintiff(s) contends:

Defendant(s) contends:

## **VIII.**

### **LIST OF WITNESSES**

Each party shall provide a list of witnesses intended to be called at trial. Each witness shall be indicated as either fact or expert. A brief statement as to the testimony of each expert witness shall also be included.

## **IX.**

### **LIST OF EXHIBITS**

Each party shall provide a list of numbered exhibits. A statement of either UNCONTESTED or CONTESTED shall follow each listed exhibit. If contested, a brief statement of the objection by the opposing party shall follow the listed exhibit.

(eg - 1. Laboratory Report from the Clinical Immunology Diagnostic Laboratory dated June 15, 2004. CONTESTED - Relevance, foundation and hearsay.)

## **X.**

### **LIST OF DEPOSITIONS**

Portions of depositions that will be read at trial must be listed by page and line number. A statement of either UNCONTESTED or CONTESTED shall follow. If contested, a brief statement of the objection by the opposing party shall follow the listed portion of the deposition to be offered.

## **XI. MOTIONS IN LIMINE**

Plaintiff(s) have filed the following Motions in Limine:

Defendant(s) have filed the following Motions in Limine:

## **XII. JURY TRIAL or BENCH TRIAL**

### **For a Jury Trial**

Trial briefs (only upon request of the Court), proposed voir dire, interrogatories to the jury, stipulated jury instructions and instructions which are not agreed upon, shall be filed 10 days prior to Trial.

### **For a Bench Trial**

Trial briefs (only upon request of the Court), shall be filed 10 days prior to Trial. Parties are referred to LRCiv 52.1 regarding the filing of proposed findings of fact and conclusions of law.

**XIII. PROBABLE LENGTH OF TRIAL**

**CERTIFICATION**

The undersigned counsel for each of the parties in this action do hereby approve and certify the form and content of this proposed Joint Pretrial Order.

\_\_\_\_\_  
Attorney for Plaintiff(s)

\_\_\_\_\_  
Attorney for Defendant(s)

This proposed Joint Pretrial Order is hereby approved as the Final Pretrial Order on this \_\_\_ day of \_\_\_\_\_, 2\*\*\*.

\_\_\_\_\_  
FRANK R. ZAPATA  
United States District Judge