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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 MICHELLE MAHER

7 Plaintiff,

8 v.

9 CITY OF FRESNO,

10 Defendant.

08-CV-00050-OWW-SMS

MEMORANDUM DECISION AND
ORDER RE: PLAINTIFF'S MOTION
FOR SUMMARY ADJUDICATION

11
12 I. INTRODUCTION

13 Before the court is a motion for summary adjudication filed by
14 Plaintiff Michelle Maher ("Plaintiff"). Plaintiff seeks summary
15 adjudication on the issue of whether the City of Fresno Fire
16 Department Fire Academy is an "education program or activity
17 receiving Federal financial assistance" for purposes of Title IX.
18 Defendant City of Fresno ("Defendant") does not oppose the motion.
19 The following background facts are taken from the parties'
20 submissions in connection with the motion and other documents on
21 file in this case.¹
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24 ¹ "A district court does not, of course, make 'findings of
25 fact' in ruling on a summary judgment motion. Findings of fact are
26 made on the basis of evidentiary hearings and usually involve
27 credibility determinations." *Rand v. Rowland*, 154 F.3d 952, 957 n.4
28 (9th Cir. 1998); see also *Scott v. Harris*, 550 U.S. 372, 378 (2007)
("As this case was decided on summary judgment, there have not yet
been factual findings by a judge or jury . . ."); *Cottrell v.*
Caldwell, 85 F.3d 1480, 1486 (11th Cir. 1996).

1 II. BACKGROUND

2 The City of Fresno Fire Department is a subdivision of
3 Defendant City of Fresno, a public entity. (Doc. 15 at 7.)²
4 Plaintiff applied for employment as a firefighter recruit to the
5 City of Fresno Fire Department in 2005. (*Id.*) Plaintiff was
6 accepted into the City of Fresno Fire Department Fire Academy and,
7 on October 10, 2005, became a conditional employee of the City of
8 Fresno working as a firefighter recruit. (*Id.*; Doc. 69 at 1-2.)
9 Plaintiff's ultimate employment was conditioned on her successful
10 completion of the probationary period and testing at the conclusion
11 of that probationary period.

12 On December 5, 2007, Plaintiff filed a state-court complaint
13 in the Fresno County Superior Court. Plaintiff's complaint
14 contains four claims: (1) discrimination under the California
15 Government Code § 12940; (2) sexual harassment/hostile work
16 environment under California Government Code § 12940; (3)
17 discrimination under Title IX of the Education Amendments of 1972,
18 20 U.S.C. § 1681(a); and (4) discrimination in violation of public
19 policy. On January 10, 2008, Defendant removed Plaintiff's state-
20 court action to federal court, and Plaintiff has not since amended
21 her complaint. In her Title IX claim, Plaintiff alleges Defendant
22 forced her to resign from the City of Fresno Fire Department Fire
23 Academy and refused to reinstate her based at least in part on the
24 unlawful consideration of her gender, parental status, and primary
25 care-giving status in violation of 20 U.S.C. § 1681.

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² Document "Doc." 15 is the Scheduling Conference Order.

1 III. SUMMARY ADJUDICATION STANDARD

2 A "party claiming relief," such as Plaintiff, may move "for
3 summary judgment on all or part of the claim." Fed. R. Civ. P.
4 56(a) (emphasis added). "The standards and procedures for granting
5 partial summary judgment, also known as summary adjudication, are
6 the same as those for summary judgment." *Mora v. Chem-Tronics,*
7 *Inc.*, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998). Summary judgment
8 is appropriate when "the pleadings, the discovery and disclosure
9 materials on file, and any affidavits show that there is no genuine
10 issue as to any material fact and that the movant is entitled to
11 judgment as a matter of law." Fed. R. Civ. P. 56(c).

12 IV. DISCUSSION AND ANALYSIS

13 Under Title IX, "[n]o person in the United States shall, on
14 the basis of sex, be excluded from participation in, be denied the
15 benefits of, or be subjected to discrimination under any education
16 program or activity receiving Federal financial assistance." 20
17 U.S.C. 1681(a) (emphasis added). Plaintiff moves for summary
18 adjudication on the issue of whether the City of Fresno Fire
19 Department Fire Academy is an "education program or activity
20 receiving Federal financial assistance" under Title IX.

21 Defendant filed a statement of non-opposition to Plaintiff's
22 motion (Doc. 72). In its statement of non-opposition, Defendant
23 states that it "will not oppose the Court's finding that the
24 [Defendant] CITY OF FRESNO is an education institution within the
25 meaning of Title IX, 20 U.S.C 1681 because the CITY OF FRESNO
26 responded to Requests for Admissions to that [e]ffect." (Doc. 72 at
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1 2.)³ Defendant submitted its own proposed order on Plaintiff's
2 motion stating that "it shall be established in this litigation,
3 that the City of Fresno Fire Department Fire Academy is 'an
4 education program or activity receiving federal financial
5 assistance' for purposes of Defendant's alleged" Title IX
6 liability. (Doc. 73 at 1.) In response to requests for admission
7 which Plaintiff propounded, Defendant admitted that its Fire
8 Department had received federal financial assistance and that the
9 City of Fresno Fire Department Fire Academy is an education
10 institution within the meaning of Title IX. (See Doc. 69, Ex. B at
11 13.) Plaintiff submitted these discovery responses in connection
12 with her motion for summary adjudication.

13 Based on the parties' submissions, it is undisputed, and there
14 is no triable issue, that the City of Fresno Fire Department Fire
15 Academy is an "education program or activity receiving Federal
16 financial assistance" under Title IX for purposes of Defendant's
17 alleged Title IX liability.

18 V. CONCLUSION

19 Plaintiff's motion for summary adjudication is GRANTED on the
20 part of her claim that the City of Fresno Fire Department Fire
21 Academy is an "education program or activity receiving Federal
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23 ³ In its statement of non-opposition, Defendant suggests that
24 Plaintiff's statement of undisputed facts is "not allowed" under
25 "Local Rule 56-2." This purported rule, "Local Rule 56-2," does not
26 exist. The applicable local rule, Local Rule 56-260(a),
27 specifically *requires* a party, such as Plaintiff, to file a
28 statement of undisputed facts in connection with a motion for
summary judgment or summary adjudication. Plaintiff's separate
statement of undisputed facts is proper under Local Rule 56-260(a).

1 financial assistance" under Title IX.

2 Plaintiff shall submit a form of order consistent with, and
3 within five (5) days following electronic service of, this
4 memorandum decision. Oral argument on this motion set for
5 September 14, 2009, is VACATED.

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7 IT IS SO ORDERED.

8 Dated: September 3, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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