

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RICHARD NUWINTORE,) Case No.: 1:13-cv-00967 - AWI - JLT
)
Plaintiff,)
) ORDER ADOPTING IN FULL FINDINGS AND
) RECOMMENDATIONS GRANTING DEFENDANT
v.) MANAGEMENT & TRAINING CORPORATION'S
) MOTION TO STRIKE PLAINTIFF'S CLAIM FOR
UNITED STATES OF AMERICA and) PUNITIVE DAMAGES
MANAGEMENT & TRAINING)
CORPORATION,) (Docs. 28, 43)
)
Defendants.)
)

Defendant Management & Training Corporation (“MTC”) seeks dismissal of Plaintiff’s claim for punitive damages pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. (Doc. 28.) The Magistrate Judge observed that the Ninth Circuit has opined a Rule 12(f) motion is not a proper method by which to strike a claim for punitive damages. (Doc. 43 at 3-4, citing Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 974 (9th Cir. 2010)). Because MTC argued the factual allegations were insufficient to support a claim for punitive damages, the Magistrate Judge converted the motion to strike to a motion to dismiss under Rule 12(b)(6). (Id., citing Consumer Solutions Reo, LLC v. Hillery, 658 F.Supp.2d 1002, 1021 (N.D. Cal. 2009)). Finding Plaintiff failed to allege facts sufficient to support a determination that MTC acted with oppression, fraud, or malice, the Magistrate Judge recommended the motion be granted. (Doc. 43 at 8.)

The parties were granted fourteen days from the date of service, or until March 14, 2014 to file objections to the Findings and Recommendations. (Doc. 43 at 8.) Although the parties were “advised

1 that failure to file objections within the specified time may waive the right to appeal the District Court's
2 order," (id. at 8-9, citing Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)), no objections were filed. In
3 accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and Britt v. Simi Valley United School
4 Dist., 708 F.2d 452, 454 (9th Cir. 1983), this Court has conducted a de novo review of the action.

5 Having carefully reviewed the entire file, the Court finds the Findings and Recommendations
6 are supported by the record and by proper analysis. Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. The Findings and Recommendations filed February 28, 2014 (Doc. 43) are
8 **ADOPTED IN FULL;**
- 9 2. Defendants' motion to strike is **GRANTED;**
- 10 3. Plaintiff's prayer for relief for punitive damages is **STRICKEN;** and
- 11 4. Plaintiff is granted leave to amend his complaint within 14 days of the date of service
12 of this Order.

13
14 IT IS SO ORDERED.

15 Dated: April 2, 2014

16 
17 _____
18 SENIOR DISTRICT JUDGE