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2 UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF CALIFORNIA

4 ANGELA D. MAYFIELD,

5 Plaintiff,

6 v.

7 COUNTY OF MERCED, et al.,

8 Defendants.
9

Case No. 1:13-cv-1619 LJO-BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. 43).

10 _____ /
11 On January 8, 2014, Defendant the County of Merced (“Defendant”) filed a Motion to
12 Dismiss. (Doc. 14). On March 25, 2014, Defendant’s Motion was referred to United States
13 Magistrate Judge Barbara A. McAuliffe pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.
14 (Doc. 25). On June 9, 2014, the Magistrate Judge issued Findings and Recommendations
15 recommending that Defendant’s motion be granted in part and that Plaintiff Angela Mayfield’s
16 (“Plaintiff”) Complaint be dismissed with leave to amend. (Doc. 43). These Findings and
17 Recommendations were served on the parties and contained notice that any objection to the Findings
18 and Recommendations were to be filed within fourteen (14) days of the date of service of the order.
19 On June 23, 2014, Plaintiff and Defendant filed objections to the Magistrate Judge’s Findings and
20 Recommendations. (Docs. 44, 45).

21 Plaintiff’s sole objection argues that the Magistrate Judge erred in denying her the opportunity
22 to amend her claims alleging the County violated its mandatory duty to provide indigent defense
23 attorneys with reasonable compensation in a non-discriminatory manner. (Doc. 44 at 2). Plaintiff
24 urges this Court to hold that Defendant has a statutory duty to provide reasonable compensation for
25 services rendered by appointed counsel pursuant to California Penal Code section 987.2(a) and in the
26 alternative allow her the opportunity to cure any defects in her complaint. (Doc. 44).

27 This Court declines Plaintiff’s request to impose a duty on the County not imposed by statute.
28 As explained by the Magistrate Judge, all government tort liability must be authorized by statute. Cal.

1 Gov. Code § 815; *Lopez v. S. Cal. Rapid Transit Dist.*, 40 Cal. 3d 780, 785 n.2 (1985); *Morris v. State*
2 *of California*, 89 Cal. App. 3d 962, 964 (Cal. App. 2d Dist. 1979). To state a cause of action, every
3 fact essential to the existence of statutory liability must be pleaded with particularity, including the
4 existence of a statutory duty. *Susman v. Los Angeles*, 269 Cal. App. 2d 803, 808 (Cal. App. 2d Dist.
5 1969); *Lopez*, 40 Cal. 3d 780, 795. “The facts showing the existence of the claimed duty must be
6 alleged.” Since the duty of a governmental agency can only be created by statute, the statute claimed
7 to establish the duty must be identified. *Searcy v. Hemet Unified Sch. Dist.*, 177 Cal. App. 3d 792, 802
8 (Cal. App. 4th Dist. 1986). The Magistrate Judge found that section 987.2 does not impose a
9 mandatory duty on the County to ensure that each appointed attorney is reasonably compensated and
10 Plaintiff’s objections provide no basis for the court to find that Penal Code section 987.2(a) establishes
11 tort liability for the County. This Court finds that the Magistrate Judge did not err in finding that
12 Plaintiff’s governmental tort liability claims were legally deficient and subject to dismissal without
13 leave to amend.

14 Defendant objects to the Magistrate Judge’s Findings and Recommendations on the basis that
15 Plaintiff has not established that amendment will cure the defects in Plaintiff’s claims dismissed with
16 leave to amend. The Magistrate Judge’s Findings and Recommendations granted the Motion to
17 Dismiss as to certain claims and provided plaintiff leave to amend as to plaintiff’s fourth claim for
18 race and sex discrimination under Title VII, fifth claim for race and sex discrimination under the
19 California Fair Employment and Housing Act (“FEHA”), sixth claim for failure to prevent
20 discrimination under the FEHA, seventh claim for retaliation under Title VII, eighth claim for
21 retaliation under the FEHA, ninth claim for violation of the Equal Pay Act, tenth claim for violation of
22 California Labor Code Section 1197.5, eleventh claim for violation of Section 1983, and twelfth claim
23 for Violation of section 1981.

24 In dismissing Plaintiff’s claims, the Magistrate Judge provided a detailed analysis of each
25 claim. For the causes of action which were legally deficient, the Magistrate Judge recommended the
26 causes of action be dismissed without leave to amend. For the causes of action which were factually
27 deficient, the Magistrate Judge recommended that the causes of action be dismissed with leave to
28 amend. While Defendant’s objections reiterate many of the arguments raised in its motion to dismiss,

1 Defendant fails to provide any basis upon which the Court can conclude that the Findings and
2 Recommendations, and more specifically, the recommendation that Plaintiff be given the opportunity
3 to amend some of her claims, was improvidently made. Thus, Defendant's objections do not warrant
4 rejection of the Magistrate Judge's Findings and Recommendations.

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 305, this court
6 has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the court finds
7 the findings and recommendations to be supported by the record and proper analysis.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. The Findings and Recommendations issued June 9, 2014 are ADOPTED IN
10 FULL;

11 2. Defendant's Motion to Dismiss, filed on January 3, 2014, is GRANTED in part as
12 follows:

13 A. Plaintiff's claims 1-3 and 13-15 are DISMISSED without leave to amend;

14 B. Plaintiff's claims 4-12 are DISMISSED with leave to amend;

15 3. Plaintiff has thirty (30) days from the date of service of this order within which to file a
16 first amended complaint; and

17 4. This action is referred back to Magistrate Judge Barbara A. McAuliffe for further
18 proceedings.

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20 IT IS SO ORDERED.

21 Dated: July 9, 2014

22 /s/ Lawrence J. O'Neill
23 UNITED STATES DISTRICT JUDGE
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