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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAWN L. RANDOLPH,

Plaintiff,

vs.

No. CIV S-11-0028 GEB GGH PS

FEDEX - FEDERAL EXPRESS
CORPORATION,

Defendant.

ORDER

_____ /

On September 21, 2012, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen (14) days. Objections were filed on October 5, 2012, a reply was filed on October 15, 2012.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

The portion of the September 21, 2012 findings and recommendations finding that Defendant’s dismissal motion has merit is adopted since Plaintiff failed to plead sufficient facts

1 showing she had a cognizable disability or that she is a qualified individual who could perform
2 the essential functions of her job; did not allege facts to support the existence of an employment
3 contract between her and Defendant; and failed to allege sufficient facts to state plausible
4 negligence or intentional infliction of emotional distress claims.

5 Therefore, Defendant's dismissal motion filed on March 21, 2012 (ECF 34) is
6 granted. However, Plaintiff is granted leave until December 14, 2012, to file a First-Amended
7 Complaint addressing the deficiencies in her Complaint raised in Defendant's dismissal motion.
8 Further, Plaintiff is warned that this lawsuit may be dismissed with prejudice under Federal Rule
9 of Civil Procedure 41(b) if Plaintiff fails to file a First-Amended Complaint on or before
10 December 14, 2012.

11 Dated: November 26, 2012

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GARLAND E. BURRELL, JR.
Senior United States District Judge