

United States District Court
For the Northern District of California

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

SUZE AZOR,

No. C-08-2825 MMC

Plaintiff,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

v.

ERIC SHINSEKI,* Secretary of Veterans
Affairs, et al.,

Defendants.

_____ /

Before the Court is defendants United States Department of Veterans' Affairs ("VA"), Stacy Lumbang ("Lumbang"), and Rene Famy's ("Famy") motion to dismiss, filed April 8, 2009, by which said defendants seek dismissal of plaintiff's claims against them on the ground they are improper defendants to the instant action. No opposition has been filed. Having read and considered the papers filed in support of the motion, the Court deems the matter appropriate for decision thereon, hereby VACATES the hearing scheduled for May 15, 2009, and rules as follows.

All of the remaining claims in the instant action are brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, et seq.¹ Where, as here, such claims are

*Pursuant to Federal Rule of Civil Procedure 25(d), Eric Shinseki is hereby substituted in place of his predecessor, James B. Peake.

¹On December 9, 2008, the Court dismissed plaintiff's claim for intentional infliction of emotional distress. (See Order filed Dec. 9, 2008 at 3.)

1 "based upon federal employment discrimination," they are to be brought "against the
2 director of the agency concerned." See White v. Gen. Servs. Admin., 652 F.2d 913, 916
3 n.4 (9th Cir. 1981); see also 42 U.S.C. § 2000e-16(c) (providing, in action against federal
4 employer under Title VII, "the head of the department, agency, or unit, as appropriate, shall
5 be the defendant"). "Under Title VII there is no personal liability for employees, including
6 supervisors," see Greenlaw v. Garrett, 59 F.3d 994, 1001 (9th Cir. 1994), nor is the agency
7 itself a proper defendant, see, e.g., Cooper v. U.S. Postal Serv., 740 F.2d 714, 716 (9th
8 Cir. 1984) (holding Postmaster General was "the only proper defendant" in action brought
9 against United States Postal Service).

10 Here, Lumbang, Famy, and the VA are all improper defendants to the action. In
11 particular, Lumbang and Famy are employees of the VA (see Compl. ¶¶ 7-8), and the VA
12 itself is an agency.

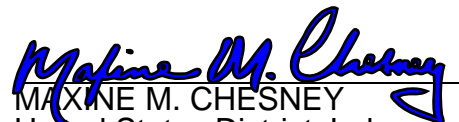
13 Accordingly, the motion to dismiss is hereby GRANTED, and plaintiff's claims
14 against Lumbang, Famy, and the VA are hereby DISMISSED.

15 **IT IS SO ORDERED.**

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17 Dated: May 1, 2009

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MAXINE M. CHESNEY
United States District Judge

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