

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 15-cv-01112-REB-CBS

JEFFREY BRIMM,

Plaintiff,

v.

FALCON SCHOOL DISTRICT NO. 49,

Defendant.

**ORDER ADOPTING RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) the **Defendant's Partial Motion to Dismiss Complaint** [#9]¹ filed August 11, 2015; and (2) the corresponding **Recommendation of United States Magistrate Judge** [#39] filed February 19, 2016. No objections to the recommendation were filed. Therefore, I review the recommendation for plain error only. *See Morales-Fernandez v. Immigration & Naturalization Service*, 418 F.3d 1116, 1122 (10th Cir. 2005). Finding no error, much less plain error, in the recommendation, I find and conclude that recommendation should be approved and adopted.

The plaintiff, Jeffrey Brimm, is a former employee of the defendant, Falcon School District No. 49. His employment was terminated on January 30, 2014. In his complaint

¹ “[#9]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

[#1], Mr. Brimm asserts claims for gender discrimination, age discrimination, disability discrimination, and retaliation for his exercise of his rights under the Family and Medical Leave Act (FMLA). In the motion to dismiss, the defendant argues that Mr. Brimm has not alleged facts sufficient to state claims for gender discrimination, age discrimination, or FMLA retaliation. In the recommendation, the magistrate judge analyzes these contentions and concludes that the motion to dismiss should be granted as to the gender discrimination and age discrimination claims. On the other hand, the magistrate judge concludes that the allegations in the complaint are sufficient to state a plausible claim for retaliation under the FMLA. The analysis and conclusions detailed by the magistrate judge are correct. Thus, I approve and adopt the recommendation.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#39] filed February 19, 2016, is approved and adopted as an order of this court;
2. That under Fed. R. Civ. P. 12(b)(6), the **Defendant's Partial Motion to Dismiss Complaint** [#9] filed August 11, 2015, is granted on the first claim for relief in the complaint [#1] for gender discrimination;
3. That under Fed. R. Civ. P. 12(b)(6), the **Defendant's Partial Motion to Dismiss Complaint** [#9] filed August 11, 2015, is granted on the third claim for relief in the complaint [#1] for age discrimination; and
4. That otherwise, the **Defendant's Partial Motion to Dismiss Complaint** [#9] filed August 11, 2015, is denied.

Dated March 17, 2016, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge