

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

GERALD SHOEMAKER, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., a
corporation,

Defendant.

Case No. 1:10-CV-00185-EJL-CWD

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

On June 20, 2003, United States Chief Magistrate Judge Candy W. Dale issued a Report and Recommendation, recommending that Defendant's Motion to Dismiss be considered a Motion for Summary Judgment and that judgment be entered in favor of Defendant, that the Requests for Judicial Notice be granted and the Motion to Strike be denied. (Dkt. No. 34.)

Any party may challenge a magistrate judge's proposed recommendation regarding by filing written objections within ten days after being served with a copy of the magistrate's Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). The district court

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must then “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* The district court may accept, reject, or modify in whole or in part, the findings and recommendations made by the magistrate. *Id.*; *see also* Fed. R. Civ. P. 72(b). Neither side has filed objections to the report and recommendation. The Court has reviewed the Report and Recommendation in light of the parties briefing on the Motions and finds that the Magistrate Judge identified the correct legal standards and properly applied those standards to the record. (Dkt. No. 34). Moreover, this Court finds that Magistrate Judge Dale’s Report and Recommendation is well founded in law and consistent with this Court’s own view of the evidence in the record.

ORDER

Having conducted a *de novo* review of the Report and Recommendation and acting on the recommendation of Magistrate Judge Dale, **IT IS HEREBY ORDERED** that the Report and Recommendation entered on February 10, 2011, (Dkt. No. 34), should be, and is hereby, **INCORPORATED** by reference and **ADOPTED** in its entirety and **THEREFORE IT IS HEREBY ORDERED** that

- 1) Defendant’s Motion to Dismiss (Dkt. No. 15) is **GRANTED**. This matter is **DISMISSED IN ITS ENTIRETY**.

2) Defendant's Motion to Strike (Dkt. No. 27) is **DENIED**.



DATED: **March 9, 2011**

A handwritten signature in black ink that reads "Edward J. Lodge".

Honorable Edward J. Lodge
U. S. District Judge