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WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA, LOUISIANA

*gjm*  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION

MARY F. EDMISTON,  
Plaintiff

CIVIL ACTION NO. 1:18-CV-00128

VERSUS

JUDGE DRELL

LOUISIANA SMALL BUSINESS  
DEVELOPMENT CENTER, *ET*  
*AL.*  
Defendants

MAGISTRATE JUDGE PEREZ-MONTES

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**JUDGMENT**

For the reasons contained in the Report and Recommendation of the Magistrate Judge previously filed herein, and after independent (*de novo*) review of the record including the objections filed herein, and having determined that the findings and recommendation are correct under the applicable law;

**IT IS ORDERED** that Edmiston's Motion for Leave to File Second Amended Complaint (Doc. 33) is **DENIED** as futile.

**IT IS FURTHER ORDERED** that LSBDC's Rule 12(b)(5) Motion to Dismiss (Doc. 31) is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that Edmiston's Motion for Service (Doc. 34) is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that LSBDC's Rule 12(b)(6) Motion to Dismiss (Doc. 31) is **GRANTED** not only for the reasons set forth in the Report and Recommendation but also because LSBDC does not meet the definition of an "employer" under 29 U.S.C. §630. LSBDC's status as described in the record brings it into the applicable realm of Kimel v. Florida Board of Regents, 528 U.S. 62 (2000),

(mentioned in the report and recommendation text), where it was determined that the Age Discrimination in Employment Act (ADEA) did not validly abrogate the state's Eleventh Amendment Immunity from suit by private individuals. Thus, even if the LSBDC could arguably fit the definition of an employer under the language of the ADEA (29 U.S.C. §630(b)), suit still could not lie in Edmiston's favor. In Kimel, the legal point made was that although the ADEA purported to express Congress' intent to abrogate Eleventh Amendment Immunity, Congress had not validly done so. Accordingly, Edmiston's claims against LSBDC are **DISMISSED WITH PREJUDICE**.

SIGNED this 30<sup>th</sup> day of November 2018, at Alexandria, Louisiana.



**DEE D. DRELL, JUDGE  
UNITED STATES DISTRICT COURT**