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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

C. TERESA MARTIN,)
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 Plaintiff,)
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 vs.)
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 NEVADA DIVISION OF INSURANCE,)
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 Defendant.)
 _____)

3:13-cv-00047-RCJ-WGC

ORDER

Plaintiff C. Teresa Martin has sued the State of Nevada’s Division of Insurance in this Court for age and sex discrimination. Defendant has moved to dismiss the claim for age discrimination under the Age Discrimination in Employment Act (“ADEA”). The Court grants the motion.

The Court generally has no jurisdiction to entertain a suit against the State of Nevada or one of its departments by one of its citizens absent the State’s consent. *See* U.S. Const. amend. XI; *Hans v. Louisiana*, 134 U.S. 1 (1890). Nevada has explicitly refused to waive its Eleventh Amendment immunity from suit in federal court as a general matter, *see* Nev. Rev. Stat. § 41.031(3), and the State did not remove the present case from state court, so waiver does not apply in the present case. Although § 5 of the Fourteenth Amendment gave Congress the power to abrogate the States’ Eleventh Amendment immunity with respect to discrimination suits in some circumstances, *see Fitzpatrick v. Bitzer*, 427 U.S. 445, 455–56 (1976) (Title VII), Congress

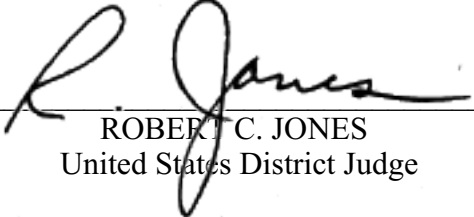
1 did not exercise that power in passing ADEA, because “Congress had virtually no reason to
2 believe that state and local governments were unconstitutionally discriminating against their
3 employees on the basis of age,” *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91 (2000). The pre-
4 *Kimel* decisions from inferior courts that Plaintiff cites in opposition are no longer persuasive.

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 12) is GRANTED.

7 IT IS SO ORDERED.

8 Dated this 26th day of April, 2013.

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11 _____
12 ROBERT C. JONES
13 United States District Judge
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