

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

UNITED STATES OF AMERICA,

09-CV-310-HU

Plaintiff,

ORDER

v.

TODD D. GASTALDO,

Defendant.

**BROWN, Judge.**

Magistrate Judge Dennis James Hubel issued Findings and Recommendation (#26) on December 3, 2009, in which he recommends the Court treat Defendant Todd Gastaldo's Motion to Dismiss (#5) as a Motion for Summary Judgment, deny Defendant's Motion for Summary Judgment, and grant the government's Motion for Summary Judgment (#11). Defendant filed timely Objections to the portion

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of the Findings and Recommendation in which the Magistrate Judge recommends the Court deny his Motion for Summary Judgment and grant the government's Motion for Summary Judgment. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

In his Objections, Defendant merely reiterates the arguments contained in his Memorandum in Support of his Motion to Dismiss and in his Opposition to Plaintiff's Motion for Summary Judgment. This Court has carefully considered Defendant's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

#### CONCLUSION

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#26) and, therefore, treats Defendant's Motion to Dismiss (#5) as a Motion for Summary Judgment, **DENIES** Defendant's

Motion for Summary Judgment (#5), and **GRANTS** the government's  
Motion for Summary Judgment (#11).

IT IS SO ORDERED.

DATED this 4<sup>th</sup> day of February, 2010.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge