

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

RICHARD ANTHONY JENKINS,

09-CV-900-BR

Plaintiff,

OPINION AND ORDER

v.

LIEUTENANT GOLDSTON, OFFICER  
GRAVES, and INSPECTOR PLANT,

Defendants.

RICHARD ANTHONY JENKINS  
# 8772908  
Snake River Correctional Institution  
777 Stanton Blvd  
Ontario, OR 97914

Plaintiff, *Pro Se*

JOHN KROGER  
Attorney General  
KRISTIN A. WINGES-YANEZ  
Assistant Attorney General  
State of Oregon Department of Justice  
1162 Court Street, N.E.  
Salem, OR 97301  
(503) 947-4700

Attorneys for Defendants

1 - OPINION AND ORDER

**BROWN, Judge.**

This matter comes before the Court on Defendant's Motion (#29) for Summary Judgment. For the reasons that follow, the Court **GRANTS** Defendant's Motion and **DISMISSES** this matter **with prejudice**.

#### BACKGROUND

Plaintiff Richard Anthony Jenkins is an inmate at Snake River Correctional Institution (SRCI). On January 14, 2009, Defendant Correctional Officer Plant searched Plaintiff's cell and found a weapon made from the earpiece of a pair of eyeglasses lying on a table in the cell. Defendant Correctional Officer W. Graves "secured" the glasses and issued a misconduct report on January 14, 2009, to Plaintiff for violation of SRCI's Inmate Rule of Prohibited Conduct 4(j)(Possession of a Dangerous/Deadly Weapon) and Rule 5 (Attempt and Conspiracy). Also on January 14, 2009, Defendant Lieutenant Goldston reviewed the misconduct report; concluded the modified eyeglasses were a weapon that could be a threat to Plaintiff, other inmates, and staff; and placed Plaintiff in segregation during the investigation of the incident and pending a hearing on the matter.

On January 15, 2009, the matter was scheduled for a hearing on January 21, 2009, and Plaintiff was notified of the hearing date.

On January 21, 2009, Hearings Officer Ron Myers opened the disciplinary hearing and read the charges against Plaintiff. Plaintiff denied the charges. Officer Myers noted the evidence reflected Plaintiff's cellmate admitted to sharpening the earpiece of the glasses. Officer Myers, therefore, dismissed all charges against Plaintiff, and Plaintiff was released from segregation.

On August 5, 2009, Plaintiff filed an action in this Court pursuant to 42 U.S.C. § 1983 in which he alleges Defendants (1) violated Plaintiff's right to substantive due process under the Fourteenth Amendment to the United States Constitution when they placed him in segregation for one week while investigating the incident and while Plaintiff awaited a hearing, (2) violated Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution when they placed him in segregation for one week while investigating the incident and while Plaintiff awaited a hearing, and (3) violated Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment when they denied him medical care for three days while he was in segregation.

On May 3, 2010, Defendants filed a Motion for Summary Judgment. On June 18, 2010, Plaintiff filed a Motion to Compel Discovery. On June 25, 2010, the Court stayed Defendants' Motion for Summary Judgment pending a decision on Plaintiff's Motion to

Compel Discovery.

On September 29, 2010, the Court issued an Order denying Plaintiff's Motion to Compel Discovery. The Court took Defendant's Motion for Summary Judgment under advisement on October 13, 2010.

#### STANDARDS

Federal Rule of Civil Procedure 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show the absence of an issue of material fact. *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1146 (9<sup>th</sup> Cir. 2005). In response to a properly supported motion for summary judgment, the nonmoving party must go beyond the pleadings and show there is a genuine issue of material fact for trial. *Id.*

An issue of fact is genuine "'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9<sup>th</sup> Cir. 2002)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The court must draw all reasonable inferences in favor of the nonmoving party. *Id.* "Summary judgment cannot be granted where contrary inferences may be drawn from the evidence as to material issues." *Easter v. Am. W. Fin.*, 381 F.3d 948, 957

(9<sup>th</sup> Cir. 2004)(citing *Sherman Oaks Med. Arts Ctr., Ltd. v. Carpenters Local Union No. 1936*, 680 F.2d 594, 598 (9<sup>th</sup> Cir. 1982)).

A mere disagreement about a material issue of fact, however, does not preclude summary judgment. *Jackson v. Bank of Haw.*, 902 F.2d 1385, 1389 (9<sup>th</sup> Cir. 1990). When the nonmoving party's claims are factually implausible, that party must "come forward with more persuasive evidence than otherwise would be necessary." *Wong v. Regents of Univ. of Cal.*, 379 F.3d 1097 (9<sup>th</sup> Cir. 2004), as amended by 410 F.3d 1052, 1055 (9<sup>th</sup> Cir. 2005) (citing *Blue Ridge Ins. Co. v. Stanewich*, 142 F.3d 1145, 1149 (9<sup>th</sup> Cir. 1998)).

The substantive law governing a claim or a defense determines whether a fact is material. *Miller v. Glenn Miller Prod., Inc.*, 454 F.3d 975, 987 (9<sup>th</sup> Cir. 2006). If the resolution of a factual dispute would not affect the outcome of the claim, the court may grant summary judgment. *Id.*

## DISCUSSION

### **I. Section 1983**

Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the

jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

"In order to survive a motion for summary judgment on a § 1983 claim, the plaintiff must establish a genuine issue of material fact that the defendant (1) acted under the color of state law, and (2) deprived him of a constitutional right." *Ewing v. City of Stockton*, 588 F.3d 1218, 1223 (9<sup>th</sup> Cir. 2009) (citing *Levine v. City of Alameda*, 525 F.3d 903, 905 (9<sup>th</sup> Cir. 2008)). State officials or municipalities are liable for deprivations of life, liberty, or property that rise to the level of a "constitutional tort" under the Due Process Clause of the Fourteenth Amendment. *Johnson v. City of Seattle*, 474 F.3d 634, 638 (9<sup>th</sup> Cir. 2007).

**II. Plaintiff has not established Defendants violated his right to substantive due process under the Fourteenth Amendment to the United States Constitution.**

Plaintiff contends Defendants violated his right to substantive due process under the Fourteenth Amendment when they placed him in temporary segregation for a week while he awaited a hearing on Defendants' misconduct report because Plaintiff's cellmate ultimately confessed to sharpening the earpiece of the glasses.

Claims alleging violations of substantive due process generally challenge allegedly "arbitrary, wrongful government

actions 'regardless of the fairness of the procedures used to implement them.'" *Hess v. Bd. of Parole and Post-Prison Supervision*, 514 F.3d 909, 913 (9<sup>th</sup> Cir. 2008)(quoting *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)). See also *Arguijo v. Dennis*, No. 07-CV-1908-BR, 2009 WL 393957, at \*3 (D. Or. Feb. 2, 2009)(same). Changes in prison conditions that are so severe "as to affect the sentence imposed in an unexpected manner implicate the Due Process Clause." *Chhoun v. Woodford*, No. C 03 3219 SI, 2005 WL 1910930, at \*5 (N.D. Cal. Aug. 10, 2005)(citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995)). The Supreme Court has held substantive due process requires only that prison officials have "some evidence" to support the disciplinary action taken. *Superintendent v. Hill*, 472 U.S. 445, 454 (1985). The Ninth Circuit has explained: "Under *Hill*, we do not examine the entire record, independently assess witness credibility, or reweigh the evidence; rather, 'the relevant question is whether there is any evidence in the record that could support the conclusion.'" *Bruce v. Ylst*, 351 F.3d 1283, 1287 (9<sup>th</sup> Cir. 2003)(quoting *Hill*, 472 U.S. at 455). "The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact." *Hill*, 472 U.S. at 456.

As noted, Defendants ultimately concluded Plaintiff did not violate the prison regulation against possession of a

dangerous or deadly weapon. Nevertheless, Defendants were only able to reach that conclusion after a thorough investigation of the matter. The report of Officer Graves constituted "some evidence" and provided "some basis in fact" for Defendants to segregate Plaintiff until Defendants could investigate the matter thoroughly.

In *Resnick v. Hayes*, the Ninth Circuit held the plaintiff, an inmate, did not have any "protected liberty interest" under the Due Process Clause "in being free from confinement in the [Special Housing Unit] pending his disciplinary hearing." 213 F.3d 443, 445 (9<sup>th</sup> Cir. 2000). Similarly, Plaintiff here has not established he has any liberty interest protected under the Due Process Clause in being free from confinement in segregation pending his disciplinary hearing. In addition, the Supreme Court noted in *Sandin* that "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law." 515 U.S. 472, 485 (1995). Accordingly, for an inmate's segregation to constitute the deprivation of a liberty interest in violation of the inmate's substantive due-process rights, the inmate must establish such segregation "present[s] the type of atypical, significant deprivation in which a State might conceivably create a liberty interest." *Id.* at 486. Plaintiff, however, has not established his segregation created



conditions that differed materially from those imposed on inmates in the general population. The Court, therefore, finds Plaintiff's one-week segregation did not present "the type of atypical, significant deprivation [that] might conceivably create a liberty interest," and, thus, it did not violate his right to substantive due process.

Finally, Plaintiff has not established the duration of his time in segregation constitutes a violation of his liberty interest under the Due Process Clause. In *Sandin* the Supreme Court concluded a 30-day stay in segregation did not impose an atypical, significant hardship on the inmate. *Id.* at 484.

On this record, the Court concludes Defendants did not violate Plaintiff's substantive due-process rights when they placed Plaintiff in segregation for one week while they investigated the circumstances underlying the misconduct report and while Plaintiff awaited a hearing. Accordingly, the Court grants Defendants' Motion for Summary Judgment as to Plaintiff's substantive due-process claim.

**III. Plaintiff has not established Defendants violated his right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution.**

Plaintiff contends Defendants violated his right to be free from cruel and unusual punishment under the Eighth Amendment when they placed him in segregation while Plaintiff awaited a hearing and when they failed to provide him with medical care for

three days while he was in segregation.

**A. Standards**

"The [United States] Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones, and . . . the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)(quotations omitted). "[T]he Eighth Amendment . . . imposes duties on [prison] officials, who must provide humane conditions of confinement; . . . ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates." *Id.* at 832-33 (quotations omitted).

"[A] prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious, [*i.e.*,] a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities." *Id.* at 834 (quotations omitted). Second "a prison official must have a sufficiently culpable state of mind. In prison-conditions cases that state of mind is one of deliberate indifference to inmate health or safety." *Id.* (citations and quotations omitted).

**B. Plaintiff has not established Defendants violated his rights under the Eighth Amendment when they placed him in segregation for a week while he awaited a hearing.**

As noted, Plaintiff contends Defendants violated his right to be free from cruel and unusual punishment under the Eighth Amendment when they placed him in segregation while he awaited a hearing on his disciplinary report.

Even though the Eighth Amendment protects against cruel and unusual punishment, it does not apply when prisoners are inconvenienced or suffer *de minimis* injuries. *See, e.g., Hudson v. McMillian*, 503 U.S. 1, 9-10 (1992) (Eighth Amendment excludes from constitutional recognition *de minimis* uses of force)."

In proving that plaintiff's alleged deprivation of rights . . . was a violation of the Eighth Amendment, an inmate must establish that there was some degree of actual or potential injury, and that society considers the conduct at issue to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to those acts.

*Nash v. Robinson*, No. 09-5178RBL/JRC, 2010 WL 4852199, at \*6 (W.D. Wash. Nov. 1, 2010) (citing *Helling v. McKinney*, 509 U.S. 25 (1993)). In *Sommers v. Thurman*, the Ninth Circuit examined a number of cases in which courts concluded a plaintiff's Eighth Amendment rights had been violated:

In *McMillian*, for example, prison guards punched an inmate in the mouth, eyes, chest, and stomach while another officer held the inmate in place and kicked and punched him from behind. *McMillian*, 503 U.S. at 4, 112

S. Ct. at 997-09. The prisoner suffered swelling of the face, mouth, and lip, and the blows loosened his teeth and cracked his dental plate. *Id.* This egregious conduct was sufficient to state an Eighth Amendment claim. See also *McCord v. Maggio*, 927 F.2d 844, 848 (5<sup>th</sup> Cir. 1991)(Eighth Amendment violation when a prisoner was forced to live and sleep for two years in an unlit cell with backed up sewage and roaches); *Fruit v. Norris*, 905 F.2d 1147, 1150 (8<sup>th</sup> Cir. 1990)(Eighth Amendment violation when prison officials compelled inmates to work inside the prison's sewage lift-pump station without protective clothing and equipment); *Parrish v. Johnson*, 800 F.2d 600, 605 (6<sup>th</sup> Cir. 1986)(Eighth Amendment violation when prison guard assaulted paraplegic inmate with a knife and forced him to sit in his own feces); *Vaughan v. Ricketts*, 859 F.2d 736, 741 (9<sup>th</sup> Cir. 1988)(prison officials not entitled to qualified immunity regarding inmate's Eighth Amendment claim where untrained medical assistants performed digital rectal cavity searches on unsanitary table in view of other prison personnel); *Cooper v. Sheriff of Lubbock County*, 929 F.2d 1078, 1083 (5<sup>th</sup> Cir.1991)(forfeiture of adequate food for significant periods of time is a "form of corporal punishment" forbidden by the Eighth Amendment); *French v. Owens*, 777 F.2d 1250, 1255 (7<sup>th</sup> Cir. 1985) (concluding kitchen and food storage areas unsanitary and unconstitutional); *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9<sup>th</sup> Cir. 1985)(inadequate "ventilation and airflow" violates Eighth Amendment if it "undermines the health of inmates and the sanitation of the penitentiary"); *Spain v. Proconier*, 600 F.2d 189, 199 (9<sup>th</sup> Cir. 1979)(Eighth Amendment is violated where prison officials completely deny exercise to some prisoners and limit the remaining population to less than five hours indoor exercise per week).

109 F.3d 614, 623 (9<sup>th</sup> Cir. 1997). See also *Hearns v. Terhune*, 413 F.3d 1036 (9<sup>th</sup> Cir. 2005)(allegations of serious health hazards in disciplinary segregation yard for a period of nine months, including toilets that did not work; sinks that were rusted and stagnant pools of water infested with insects; and a lack of cold water even though the temperature in the prison yard

exceeded 100 degrees were enough to state a claim of unconstitutional prison conditions).

Here Plaintiff has not established his one-week placement in segregation created conditions that violated contemporary standards of decency. In fact, Plaintiff's one-week confinement was similar to those cases in which courts held there was not any violation of the Eighth Amendment. See, e.g., *Anderson v. County of Kern*, 45 F.3d 1310, 1314-15 (9<sup>th</sup> Cir. 1995)(temporary placement in safety cell that was dirty and smelled bad did not constitute infliction of pain), *amended by* 75 F.3d 448 (9<sup>th</sup> Cir. 1995); *Hernandez v. Denton*, 861 F.2d 1421, 1424 (9<sup>th</sup> Cir. 1988)(allegation that inmate slept without mattress for one night is insufficient to state Eighth Amendment violation), *vacated on other grounds by* 493 U.S. 801 (1989); *Chhoun*, 2005 WL 1910930, at \*10 (one-week deprivation of access to legal materials was not sufficient to establish a violation of the plaintiff's Eighth-Amendment rights).

Viewing the evidence in the light most favorable to Plaintiff, the Court finds no reasonable juror could conclude that Defendants' conduct constituted deliberate indifference to a substantial risk of harm to Plaintiff's health or safety. Plaintiff, therefore, has not established Defendants violated Plaintiff's rights under the Eighth Amendment when they held him for a week in segregation pending investigation and a hearing.

**C. Plaintiff has not established Defendants' alleged failure to provide him with medical care for three days during his segregation violated his rights under the Eighth Amendment.**

Plaintiff contends Defendants failed to provide him with medical care for three days while he was in segregation.

Deliberate indifference to serious medical needs is a cognizable claim for violation of the Eighth Amendment proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). See also *Actkinson v. Vargo*, 284 F. App'x 469, 472 (9<sup>th</sup> Cir. 2008). A serious need for medical treatment exists if the failure to treat a prisoner's condition could result in further significant injury or the "unnecessary and wanton infliction of pain." *Jett v. Penner*, 439 F.3d 1091, 1096 (9<sup>th</sup> Cir. 2006)(citing *Gamble*, 429 U.S. at 104). See also *Actkinson*, 284 F. App'x at 472 (same). A prisoner has a serious need for medical treatment when he has an injury that a reasonable doctor or patient would find important and worthy of comment or treatment, a medical condition that significantly affects his daily activities, or chronic and substantial pain. *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9<sup>th</sup> Cir. 1992), *overruled on other grounds by WMX Tech., Inc. v. Miller*, 104 F.3d 1133 (9<sup>th</sup> Cir. 1997)(citing *Wood v. Housewright*, 900 F.2d 1332, 1337-41 (9<sup>th</sup> Cir. 1990), and *Hunt v. Dental Dep't*, 865 F.2d 198, 200-01 (9<sup>th</sup> Cir. 1989)).

Before he can establish deliberate indifference on the part of prison officials, a plaintiff must show: (1) prison officials purposefully ignored or failed to respond to the prisoner's pain or possible medical need and (2) the denial of medical care to the plaintiff by prison officials was harmful. *Jett*, 439 F.3d at 1096. See also *McGuckin*, 974 F.2d at 1060. Deliberate indifference may be established by showing that prison officials deny, delay, or intentionally interfere with medical treatment or it may be demonstrated by the way prison officials provide medical care. *Jett*, 439 F.3d at 1096. See also *McGuckin*, 974 F.2d at 1062 (a delay of seven months in providing medical care to a plaintiff whose medical condition was left virtually untreated and the plaintiff was forced to endure "unnecessary pain" is sufficient to present a colorable § 1983 claim); *Hunt*, 865 F.2d at 201 (it could be reasonably concluded a delay of three months in providing dentures to an inmate suffering serious dental problems was more than an isolated occurrence of neglect and that the delay was deliberate).

"Mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights." *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9<sup>th</sup> Cir. 2004)(citation omitted). See also *Williams v. Ayers*, 217 F. App'x 647 (9<sup>th</sup> Cir. 2007)(same). In addition, a mere

difference of opinion between a prisoner and prison medical authorities regarding treatment does not give rise to a claim under § 1983 for inadequate medical treatment. *Sanchez v. Vild*, 891 F.2d 240, 242 (9<sup>th</sup> Cir. 1989). See also *Hightower v. Schwarzenegger*, No. 07-16522, 2009 WL 119792, \*1 (9<sup>th</sup> Cir. Jan. 15, 2009)(same).

The record reflects Defendants are not medical staff and are not in any way responsible for administering or monitoring a prisoner's need for medical treatment. "Liability under section 1983 arises . . . upon a showing of personal participation by the defendant" in the alleged constitutional deprivation. *Manning v. Ryan*, 356 F. App'x 950, 951 (9<sup>th</sup> Cir. 2009)(quoting *Taylor v. List*, 880 F.2d 1040, 1045 (9<sup>th</sup> Cir. 1989)). In addition, even though Plaintiff alleges he was not given medical treatment, he does not state how such a delay injured him. Plaintiff also does not articulate what other medical care, if any, was allegedly required during the time he was in segregation.

Viewing the evidence in the light most favorable to Plaintiff, the Court finds no reasonable juror could conclude on this record that Defendants' conduct constituted deliberate indifference to a substantial risk of harm to Plaintiff's health or safety. Plaintiff, therefore, has not established Defendants violated Plaintiff's rights under the Eighth Amendment.



Accordingly, the Court grants Defendant's Motion for Summary Judgment as to Plaintiff's Eighth-Amendment claim.

**IV. Plaintiff's tort claims.**

Although it is not clear from his Complaint, Plaintiff appears to assert at least two state-law tort claims: defamation and personal injury. Defendants seek summary judgment on any state-law claims by Plaintiff on the grounds that (1) the Court must substitute the State of Oregon for the individual Defendants in Plaintiff's state-law claims pursuant to the Oregon Tort Claims Act (OTCA) and (2) any state-law claims against the State of Oregon brought by Plaintiff in federal court are barred under the Eleventh Amendment. The Court agrees.

The OTCA provides in pertinent part:

[E]very public body is subject to action or suit for its torts and those of its . . . employees . . . acting within the scope of their employment or duties. . . . The sole cause of action for any tort of . . . employees . . . of a public body acting within the scope of their employment or duties . . . shall be an action against the public body only. The remedy provided by ORS 30.260 to 30.300 is exclusive of any other action or suit against any such . . . employee . . . of a public body whose act or omission within the scope of the . . . employee's . . . employment or duties gives rise to the action or suit. No other form of civil action or suit shall be permitted. If an action or suit is filed against an officer, employee or agent of a public body, . . . the public body shall be substituted as the only defendant.

Or. Rev. Stat. § 30.265(1). Accordingly, the Court must substitute the State of Oregon as the proper Defendant in

Plaintiff's state-law claims.

The Eleventh Amendment provides: "The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Although the Eleventh Amendment does not bar actions against a state by its own citizens on its face, courts have consistently held an unconsenting state is immune from actions brought in federal courts by her own citizens as well as by citizens of another state. *Mayweathers v. Newland* 314 F.3d 1062, 1069 (9<sup>th</sup> Cir. 2002). See also *Bethel Native Corp. v. Dep't of Interior*, 208 F.3d 1171, 1173 (9<sup>th</sup> Cir. 2000) (same). In addition, the Supreme Court has held actions against state officials acting in their official capacities are equivalent to actions against the state itself and, therefore, raise the same Eleventh Amendment concerns as actions against the state. *Chew v. Gates*, 27 F.3d 1432, 1446 n.15 (9<sup>th</sup> Cir. 1994) (citing *Kentucky v. Graham*, 473 U.S. 159, 165-67 (1985)).

There are two exceptions to a state's sovereign immunity: when (1) Congress has validly abrogated that immunity or (2) a state has expressly consented to the suit. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 (1985). See also *Welch v. Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 473-74 (1987)(recognizes two exceptions to Eleventh Amendment bar). The

Supreme Court has made clear that Congress did not abrogate the states' Eleventh-Amendment immunity by enacting § 1983 or by granting federal courts supplemental jurisdiction over state-law claims in 28 U.S.C. 5 1367(a). See *Quern v. Jordan*, 440 U.S. 332, 341 (1979). See also *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 541-42 (2002). Congress, therefore, has not done anything to abrogate the State of Oregon's immunity to Plaintiffs state-law claims. In addition, the State of Oregon has not consented to be sued or done anything to waive its immunity in this action. See *Edelman v. Jordan*, 41 5 U.S. 651, 673 (1974)("[W]e will find waiver only where stated by the most express language or by such overwhelming implications from the test as [will] leave no room for any other reasonable construction."). Although the OTCA waives the State of Oregon's immunity to actions in state court, it is not a waiver of Eleventh Amendment immunity. *Estate of Pond v. Oregon*, 322 F. Supp. 2d 161, 165 (D. Or. 2004). See also *Ctr. for Legal Studies, Inc. v. Lindley*, 64 F. Supp. 2d 970, 974 (D. Or. 1999).

The Court, therefore, concludes Plaintiff's state-law claims against Defendants are barred by the Eleventh Amendment. Accordingly, the Court grants Defendants' Motion for Summary Judgment as to Plaintiff's state-law claims.

CONCLUSION

For these reasons, the Court **GRANTS** Defendants' Motion (#29) for Summary Judgment and **DISMISSES** this matter **with prejudice**.

IT IS SO ORDERED.

DATED this 4<sup>th</sup> day of January, 2011.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge