Choka v. McClellan et al Doc. 39

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

LESLIE CHOKA,

Plaintiff,

No. CV 10-702-ST

v.

OPINION AND ORDER

THOMAS MCCLELLAN, aka Thomas McCallan; OREGON DEPARTMENT OF MOTOR VEHICLES; and JOHN DOES A to Z,

Defendants.

MOSMAN, J.,

On December 28, 2010, Magistrate Judge Stewart issued her Findings and Recommendation ("F&R") (#37) in the above-captioned case recommending that I grant the State of Oregon's Motion to Dismiss (#25), and grant in part and deny in part Thomas McClellan's Motion to Dismiss (#29). No objections were filed.

STANDARD OF REVIEW

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the

court is not required to review, under a de novo or any other standard, the factual or legal

conclusions of the magistrate judge as to those portions of the F&R to which no objections are

addressed. See Thomas v. Arn, 474 U.S. 140, 149 (1985); United States v. Reyna-Tapia, 328

F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to

review the F&R depends on whether or not objections have been filed, in either case, I am free to

accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I ADOPT Judge Stewart's F&R (#37) as my own, and I GRANT the State

of Oregon's Motion to Dismiss (#25), and DISMISS Count II of the Complaint with prejudice. I

also GRANT Mr. McClellan's Motion to Dismiss (#29) as to Count I alleged against Mr.

McClellan in his individual capacity, and I DISMISS that claim without prejudice and with leave

to amend; I otherwise DENY McClellan's Motion to Dismiss.

IT IS SO ORDERED.

DATED this 11th day of February, 2011.

/s/ Michael W. Mosman

MICHAEL W. MOSMAN United States District Court

OPINION AND ORDER - 2