

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

ESTATE OF GRACE KALAMA, by and through her personal representative, Debbie Scott; ESTATE OF SEAN STARR, by and through his personal representative, Ramona Starr, VALERIE SUPPAH, by and through her personal representative, Lucille Suppah, and LADAMERE KALAMA, by and through his conservator, Elmer Scott,

Plaintiffs,

v.

JEFFERSON COUNTY, a political subdivision of the State of Oregon; JASON MICHAEL EVAN; THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON; TOD HENRY KERR; and DOES (1 through 5),

Defendants.

Case No. 3:12-cv-01766-SU

ORDER ADOPTING FINDINGS AND RECOMMENDATION

Michael H. Simon, District Judge.

United States Magistrate Judge Patricia Sullivan issued Findings and Recommendation in this case on May 21, 2013. Dkt. 27. Judge Sullivan recommended that Defendants' motion to dismiss be granted. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Sullivan's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Sullivan's Findings and Recommendation, Dkt. 27. Defendants' motion to dismiss, Dkt. 16, is **GRANTED**; Defendant Confederated Tribes of Warm Springs is **DISMISSED** with prejudice, and Defendant
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Kerr is **DISMISSED** without prejudice. Pursuant to Plaintiffs' concessions, their claims for "punishment without trial by jury" under the Fifth, Sixth, Eighth, and Fourteenth Amendments; for "intrusion of bodily security and integrity" under the Ninth and Fourteenth Amendments; for a due process violation against Defendant Confederated Tribes and Defendant Kerr; and for "restraint of liberty without warrant" under the Fifth and Fourteenth Amendments are **DISMISSED** with prejudice.

IT IS SO ORDERED.

DATED this 18th day of June, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge