

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CESAR CARDENAS PULIDO,

Plaintiff,

No. 3:15-CV-01992-AC

v.

OPINION & ORDER

WALTER MONK, JOHN DOES 1 – 10,
and UNITED STATES OF AMERICA,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge John Acosta issued his Findings & Recommendation (“F&R”) [41] on October 18, 2016, recommending that Defendants’ motions to dismiss Plaintiff’s Complaint be granted and granting Plaintiff leave to amend. Plaintiff and Defendant Monk have timely filed objections [43], [44] to the F&R. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When a party objects to any portion of the Magistrate Judge's F&R, 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); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

With respect to Parts I, II.A, and III of the F&R, the Court has carefully considered the parties' objections and concludes there is no basis to modify the F&R. The Court has also reviewed the pertinent portions of the record de novo and find no errors in the Magistrate Judge's F&R.

The Court modifies Part II.B of the F&R to the extent that it relies upon Wilson-Sauls v. Curtis, No. CIV.07-163-AS, 2008 WL 836417 (D. Or. Mar. 26, 2008), to support implying a Bivens remedy. See, Ponce v. U.S. Gov't, No. 3:11-CV-172-AC, 2013 WL 6177812, at *9–10 (D. Or. Nov. 21, 2013), aff'd, 639 F. App'x 511 (9th Cir. 2016), and aff'd, No. 13-36192, 2016 WL 4088753 (9th Cir. Aug. 2, 2016) (disagreeing with Wilson-Sauls and holding that the Federal Employees Compensation Act provided a sufficient alternative remedy to displace a Bivens claim for Fourth and Fifth Amendment violations). Wilson-Sauls is inapposite the present case. It is well-established that victims of Fourth and Fifth Amendment violations caused “by federal officers may bring suit for money damages against the officers in federal court.” Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 66–67 (2001) (citing Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 396 (1971)). Accordingly, the Court adopts the remainder of Part II.B of the F&R.

//

//


//

CONCLUSION

The Court ADOPTS Magistrate Judge Acosta's Findings & Recommendation [41], and therefore, Defendants' motions to dismiss [30], [31] are GRANTED with leave to Plaintiff to amend his Complaint.

IT IS SO ORDERED.

DATED this 23 day of January, 2016.



MARCO A. HERNÁNDEZ
United States District Judge