

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MIRANDA B., HANNAH C., JAMIE G.,)	CV 00-1753-HU
JONG K., JOANNE K., JAMES R.,)	
GEORGE P., ANTHONY G., LEONARD P.,)	ORDER
and JUAN S., individually and on)	
behalf of others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
JOHN KITZHABER, Governor of the)	
State of Oregon, in his official)	
capacity; OREGON DEPARTMENT OF)	
HUMAN SERVICES; and BOB MINK,)	
Director of the Oregon Department)	
Human Services, in his official)	
capacity,)	
)	
Defendants.)	

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BROWN, Judge.

Magistrate Judge Dennis J. Hubel issued Findings and Recommendation (#61) on August 10, 2001, in which he recommended the Court grant in part and deny in part Defendants' Motion to Dismiss (#16). Defendants filed timely objections to the Magistrate Judge's Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 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. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988);

McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). The party who objects to the Findings and Recommendation is required to "promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient, unless the district judge otherwise directs." Fed. R. Civ. P. 72(b). The district court must either hold a new hearing on the portion of a magistrate's findings to which a party objects or review a transcript or tape recording of the relevant portions of the proceedings. *See Spaulding v. University of Washington*, 676 F.2d 1232, 1235 (9th Cir. 1982). The parties may, however, waive their right to have the district court review a transcript. *See id.*

In this case, Defendants, the objecting parties, did not request a transcript pursuant to Rule 72(b) nor did they protest the lack of a transcript. No party asked the Court to hold an evidentiary hearing or to hear oral argument on any matter addressed in the Findings and Recommendation. This Court, therefore, concludes the parties waived their right to have the Court review a transcript or tape recording of the proceedings before the Magistrate Judge as part of the Court's *de novo* review.

In light of recent Supreme Court decisions, the Court understands Defendants' criticism of the underpinnings of Ninth Circuit decisions involving issues presented here. The Court, nevertheless, is bound by Ninth Circuit precedent. Accordingly, this Court has reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings and Recommendation to deny in part Defendants' Motion to Dismiss. The Court concludes the Magistrate Judge properly applied precedent currently binding in the Ninth Circuit.

Because no objections to the Findings and Recommendation were timely filed pertaining to the Magistrate Judge's recommendation to grant Defendants' Motion to Dismiss as to Plaintiffs' claim under 42 U.S.C. § 1983 against Defendant Oregon Department of Human Services, this Court is relieved of its obligation to review that portion of the record *de novo*. *Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). *See also Lorin Corp. v. Goto & Co.*, 700 F.2d 1202, 1206 (8th Cir. 1983). Having reviewed the legal principles *de novo*, the Court finds no error in this portion of the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#61) and, accordingly, Defendants' Motion to Dismiss (#16) is **GRANTED** as to the § 1983 claim against Defendant Oregon Department of Human Services and **DENIED** in all other respects.

IT IS SO ORDERED.

Dated this 17th day of September, 2001.

/s/ Anna J. Brown

ANNA J. BROWN

United States District Judge