

JUL 22 2002

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

KIMBERLY PIERCE and BARBARA  
MUNSON,

Plaintiff-Interveners,

v.

RALPH'S INC., an Idaho corporation d/b/a )  
SIHERMAN IGA, WILLIAM PETERSON )  
and JANE DOE PETERSON, individually )  
and as a marital community, and IGA, )  
INC., a foreign corporation, )

Defendants. )

CASE NO. CV 01-0157-N-EJL

**REPORT AND RECOMMENDATION**

Currently pending before the Court for its consideration is Defendants' Motion to Dismiss Damage Claims (docket # 21). Having reviewed all briefing submitted, as well as other pertinent documents in the Court's file, and having heard oral arguments, the Court makes its Report and Recommendation as follows.

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## REPORT

### I.

#### **Background.**

Plaintiff-Intervener Kimberly Pierce ("Pierce") and Plaintiff-Intervener Barbara Munson ("Munson") were employed by Ralph's grocery store, owned by Defendant William Peterson ("Peterson"). *Interveners' Complaint for Damages*, 2-3 (docket # 17). Pierce worked for Ralph's as the Deli Manager from the spring of 1995 until she resigned in late summer, 1999. *Id.* at 2. Munson was hired by Ralph's as a checker in the summer of 1991, was promoted as a Deli manager in the fall of 1994, and resigned in 2000. *Id.* at 3. Peterson was the Plaintiffs' immediate supervisor at all times. *Id.*

Plaintiffs allege Peterson made sexual comments regarding themselves and other females in the store despite their objections that such comments were inappropriate. *Id.* They further allege Peterson subjected them to unwanted physical contact, had once blocked each Plaintiffs' exit from the cooler at the store, and at one point pulled Munson's shirt down below her shoulder. *Id.* at 4, 5. Upon Pierce's resignation, she filed a complaint with the Idaho Human Rights Commission. Munson alleges Peterson approached her at that time, asking her to support his version of the events or else the store would have to be closed and all employees would lose their jobs. *Id.* at 5. Munson soon after filed her own complaint with the Idaho Human Rights Commission and both women, as well as a month-long employee in 1999 named Jo Munson, filed claims with the Equal Employment Opportunity Commission. *Id.*; *Complaint and Jury Trial Demand*, (docket #1).

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April 11, 2001 the EEOC filed a claim against Ralph's and IGA, Inc. (docket # 1) to correct the "unlawful employment practices on the basis of sex, [for] constructive discharge and retaliation and to provide appropriate relief" to Pierce, Munson, and Jo Munson. *Complaint and Jury Trial Demand, 1*. Jo Munson did not pursue civil action individually, but on April 26, 2001 Pierce and Barbara Munson filed a joint motion to intervene (docket #3) that was granted July 13, 2001 (docket # 16). Pierce and Munson then filed their own complaint (docket # 17) against Ralph's, Peterson, Peterson's spouse, and IGA, Inc. Plaintiff-Interveners' amended complaint contains the following causes of action: 1) sexual harassment and hostile work environment; 2) constructive discharge; 3) negligent investigation; 4) sex discrimination; 5) disability discrimination; 6) tort of assault; and 7) false imprisonment. *Amended Complaint for Damages and Demand for Jury Trial, 6-8*.

October 3, 2001, all parties met for a mediation session with retired Judge Harold Clarke. *Affidavit of Jeffrey A. Child, 2* (docket # 22). As a result of that meeting Defendant Peterson, his attorney Jeffrey Child and Judge Clarke signed an "agreement for settlement" which is attached to the affidavit of Mr. Child (docket # 22) as well as the affidavit of Plaintiff-Interveners' attorney, Christine Weaver (docket # 26). The agreement stated that Peterson would present a check for \$17,500 payable to Plaintiffs' attorney's trust account and, by December 8, 2001, would deliver financial records to Plaintiffs' counsel. *Affidavit of Christine M. Weaver* (docket # 26), *Exhibit B*. The agreement went on to state that if those records confirmed what Peterson represented at the mediation concerning his financial status, then the case would "be fully and finally settled for the \$17,500 and execution of the Consent Decree [would] be filed with the court." *Id*. However, if the records revealed that the financial information was not accurately represented and Judge

Clarke confirms such, then “negotiation and litigation will reopen [and] [t]he \$17,500 shall be applied toward any new negotiated settlement or ultimate verdict.” *Id.*

Soon after the October mediation, Ms. Weaver contacted Mr. Child about acquiring Peterson’s financial records referred to in the mediation agreement. *Affidavit of Christina M. Weaver* (docket # 26). The following month, Ms. Weaver received only one response from the twenty-seven institutions Mr. Child allegedly requested information from. *Plaintiffs’ Joint Response to the Motion to Dismiss Damage Claims, 4-5* (docket # 25). December 5, 2001, Ms. Weaver sent a letter to Mr. Child that referred to some of Peterson’s tax returns that had been discovered, stating that “[w]ith this information, it is apparent that your client’s prior offer of \$17,500. . . is inadequate. . . . Perhaps with this information, you could go back to Mr. Peterson and discuss this matter with him.” *Affidavit of Christina M. Weaver* (docket # 26), *Exhibit J*. Five days later, Ms. Weaver sent Mr. Child a letter informing him that she disbursed the \$17,500 to her clients that was “in essence a down payment on any settlement.” *Affidavit of Christina M. Weaver* (docket # 26), *Exhibit K*.

All parties met again, on March 7, 2002, with Judge Clarke for another mediation session to, as Judge Clarke described, “see if there was any potential for a change in position of the defendants regarding the monies that were appropriate for settlement of the case.” *Affidavit of Christina M. Weaver* (docket # 26), *Exhibit P*. The letter added that “it appeared that there was some improvement in the revenues from the store” but that “it appears that the chances for settling the case without the necessity of trial are slender if at all.” *Id.*

April 1, 2002, Defendants filed a motion to dismiss damage claims (docket # 21) claiming that they were fully settled and compromised. Plaintiffs filed a response to Defendants’ motion to

dismiss (docket # 25) on April 24, 2002, claiming that the case is still open and has not been settled. Plaintiffs' request for a settlement conference (docket # 24) was granted on May 7, 2002 (docket # 28), despite the pending motion to dismiss, and is scheduled for August 29, 2002 (docket # 32).

## II.

### Standard of review.

A motion to dismiss should not be granted "unless it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). When a complaint or portion thereof is tested as to the legal sufficiency of the claims for relief, all allegations of material fact in the complaint are taken as true and construed in the light most favorable to the moving party. *Buckey v. County of Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1991), *cert. denied*, 506 U.S. 909 (1992).

Generally, the Court may not consider any material beyond the pleadings in ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Branch v. Tunnel*, 14 F.3d 449, 453 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 2704 (1994). Furthermore, if a Rule 12(b)(6) motion raises "matters outside the pleading" and these matters are "presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." When reviewing a motion for summary judgment, the proper inquiry is whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c) (1993). A moving party who does not bear

the burden of proof at trial may show that no genuine issue of material fact remains by demonstrating that “there is an absence of evidence to support the non-moving party's case.” *Celotex Corp v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the moving party meets the requirement of Rule 56 by either showing that no genuine issue of material fact remains or that there is an absence of evidence to support the non-moving party's case, the burden shifts to the party resisting the motion who “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). It is not enough for the [non-moving] party to “rest on mere allegations of denials of his pleadings.” *Id.* Genuine factual issues must exist that “can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.” *Id.*, at 250.

“When determining if a genuine factual issue . . . exists, . . . a trial judge must bear in mind the actual quantum and quality of proof necessary to support liability.” *Id.*, at 249-250. “The mere existence of a scintilla of evidence in support of the [defendant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [defendants].” *Id.*

The Ninth Circuit has consistently applied the standard for granting summary judgment. *Musick v. Burke*, 913 F.2d 1390 (9th Cir. 1990); *Pelletier v. Federal Home Loan Bank*, 968 F.2d 865 (9th Cir. 1992); *Bieghler v. Kleppe*, 633 F.2d 531 (9th Cir. 1980).

In determining whether a material fact exists, facts and inferences must be viewed most favorably to the non-moving party. To deny the motion, the Court need only conclude that a

result other than that proposed by the moving party is possible under the facts and applicable law. *Aronsen v. Crown Zellerbach*, 662 F.2d 584, 591 (9th Cir. 1981).

The Ninth Circuit has emphasized that summary judgment may not be avoided merely because there is some purported factual dispute, but only when there is a “genuine issue of material fact.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497 (9th Cir. 1992).

In order to withstand a motion for summary judgment, the non-moving party: (1) must make a showing sufficient to establish a genuine issue of fact with respect to any element for which it bears the burden of proof; (2) must show that there is an issue that may reasonably be resolved in favor of either party; and (3) must come forward with more persuasive evidence than would otherwise be necessary when the factual context makes the non-moving party's claim implausible.

*British Motor Car Distrib. Ltd. v. San Francisco Automotive Indus. Welfare Fund*, 882 F.2d 371 (9th Cir. 1989).

### III.

#### **Defendant's Motion to Dismiss Damage Claims.**

Defendants' agree that the \$17,500 offered at the October 3, 2001 mediation was “conditionally accepted” pending further discovery of Peterson's financial records. *Defendants' Memorandum in Support of Motion to Dismiss Plaintiffs' Damage Claims*, (docket # 23), 3-4. However, Defendants contend that when Ms. Weaver distributed the \$17,500 to her clients on December 10, 2001, that the Plaintiffs “clearly elected not to reopen settlement negotiations when they accepted the settlement money. . . .” *Id.* at 4.

Plaintiffs maintain no settlement was reached because 1) Plaintiffs only accepted Defendants' \$17,500 offer contingent to further discovery of financial records; 2) Defendants failed to produce the majority of those records; 3) Plaintiff believes, based upon what records

were made available, that Defendant misrepresented his financial status at the October mediation; 4) Plaintiffs told Defendants that the \$17,500 offer was unacceptable; 5) Defendants represented to the court in December that negotiations were ongoing; 6) Defendants attended a second mediation session in March of 2002; 7) the mediator represented that he believed that the Defendants' financial status had improved; 8) none of the Plaintiffs executed releases of any claims. *Plaintiff EEOC and Plaintiff-Interveners' Joint Response to the Motion to Dismiss Damage Claims* (docket # 25), 8-9.

The court may only enforce complete settlement agreements. *Callie v. Near*, 829 F.2d 888, 890 (9<sup>th</sup> Cir. 1987). Where material facts are in dispute, the court must hold an evidentiary hearing before it can enforce a settlement. *In re City Equities Anaheim, Ltd. v. Lincoln Plaza Development Co.*, 22 F.3d 954, 958 (9<sup>th</sup> Cir. 1994).

The Plaintiffs did not intend to be bound to the October mediation agreement. The agreement indicates that they only intended to be bound by a final settlement agreement filed with the court. *Affidavit of Christine M. Weaver* (docket # 26), *Exhibit B*. Furthermore, Plaintiffs did not even sign the October agreement, nor did they sign a release of claims. Therefore, the agreement can hardly be considered "final."

However, Defendants seek to "finalize" the settlement agreement by alleging that the Plaintiffs were not interested in furthering negotiations as evidenced by their acceptance of the \$17,500. Plaintiffs deny that acceptance of the \$17,500 was a ratification of the agreement, and point out that ratification is a question of fact that the Defendants bear the burden of proving. *See Mallot & Pearson v. Office of Workers Compensation*, 98 F.3d 1170 (9<sup>th</sup> Cir. 1996). The only piece of evidence the Defendants' offer to support ratification is the Plaintiffs' acceptance of the

money. However, the language in the agreement itself and the letter Ms. Weaver sent notifying Mr. Child of the distribution of the \$17,500 show that the parties had no intention of accepting the offer in full satisfaction of their claims and still considered the matter unsettled. *See Affidavit of Christina M. Weaver* (docket # 26), *Exhibit B*; *Id.*, *Exhibit K*. In fact, the Defendants may also have considered the case unsettled as evidenced by their attendance at the second mediation session in March of 2002.

Summarily, the Defendants have failed to provide the court with any evidence that the October agreement represents the final wishes of all the parties or that the acceptance of the \$17,500 was ratification of the agreement. Defendants have no legal argument nor any facts to support their position that the monetary claims against them be dismissed, therefore this motion must fail.

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### **RECOMMENDATION**

Based upon the foregoing, the Court being otherwise fully advised in the premises, the Court **hereby RECOMMENDS that:**

- 1) Defendants' motion to dismiss be DENIED.

Written objections to this Report and Recommendation must be filed within ten (10) days pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(b), or as a result of failing to do so, that party may waive the right to raise factual and/or legal objections to the United States Court of Appeals for the Ninth Circuit.

DATED: July 19, 2002.



MIKEL H. WILLIAMS

UNITED STATES MAGISTRATE JUDGE

United States District Court  
for the  
District of Idaho  
July 23, 2002

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 2:01-cv-00157

I certify that a copy of the attached document was mailed or faxed to the following named persons:

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Cameron S. Burke, Clerk

Date: 7-23-02

BY:   
(Deputy Clerk)