

**United States District Court**  
**EASTERN DISTRICT OF TEXAS**  
**SHERMAN DIVISION**

SURAN WIJE	§	
	§	
v.	§	CASE NO. 4:14-CV-571
	§	(Judge Mazzant/Judge Nowak)
TEXAS WOMAN’S UNIVERSITY, ET AL.	§	

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On February 5, 2016, the report of the Magistrate Judge (Dkt. #100) was entered containing proposed findings of fact and recommendations that Defendants Texas Woman’s University (“TWU”), Ann Stuart, Robert Neely, Ann Staton, Jennifer Martin, Daniel Miller, Barbara Presnall, AnaLouise Keating, Linda Rubin, Stephen Souris, Claire Sahlin, Christian Hart, and Danielle Phillips’ (collectively, the “Individual Defendants,” and with TWU, the “TWU Defendants”) Second Amended Motion to Dismiss (Dkt. #78) be granted. Having received the report of the Magistrate Judge (Dkt. #100), having considered Plaintiff’s timely filed objections (Dkt. #101), the TWU Defendants’ response to Plaintiff’s objections (Dkt. #103), and Plaintiff’s reply to the TWU Defendants’ response (Dkt. #104), the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct.

**BACKGROUND**

The facts in this case originate from Plaintiff’s dissatisfaction with a grade appeal process he participated in as a student at Defendant TWU in the spring of 2011 (*see generally* Dkt. 86). The underlying facts are set out in further detail by the Magistrate Judge, and need not be

repeated in their entirety (*see* Dkt. #100). Accordingly, the Court sets forth herein only those facts pertinent to Plaintiff's objections.

Plaintiff allegedly lost points for lack of comprehension during a final exam, resulting in his receiving a B on his examination (Dkt. #86 at 3). Plaintiff subsequently raised the matter with the course's professor, Dr. Linda Rubin, Ph.D. ("Dr. Rubin"). *Id.* at 2; Ex. 3. Plaintiff contends that the points he lost on the examination was a result of Dr. Rubin's discrimination against him because of his gender and race/national origin. *Id.* at 2. Plaintiff also contends that Dr. Rubin deducted grade points from his final grade for his absence from class to attend a Fulbright award ceremony. *Id.* at 2-3. Plaintiff subsequently appealed Dr. Rubin's decision through TWU's "six-step" grade appeal process. *Id.* at 3. Plaintiff does not allege facts regarding each stage of the appeal, but contends generally that the Individual Defendants were appeal participants. *Id.* Plaintiff alleges that throughout the appeal process, various professors, including Drs. Rubin and Claire Sahlin, made disparaging and untrue remarks about his poor academic performance and "invisible disability health information," which gives rise to his cause of action for defamation. *Id.* at 3. Plaintiff also states that at the final stage of the appeal, Drs. Ann Stuart and Robert Neely ignored Plaintiff's appeal. *Id.* at 4. Plaintiff contends TWU discriminated and retaliated against him by ultimately denying his appeal. *Id.* at 2.

Moreover, Plaintiff argues that, while he was enrolled in TWU's Women's Studies Certificate Program, he had allegedly completed the requirements for both the certificate program and TWU's Women's Studies graduate program, but nevertheless was denied admission to the graduate program following his grade appeal despite his excellent grades and completion of all requirements. *Id.* at 3-4. Plaintiff also contends that he was required to apply for the same graduate program three different times, and TWU billed him for the application fee each time.

*Id.* at 4. Plaintiff does not dispute that he received a certificate from TWU upon completion of the certificate program, but does assert that, but for the TWU Defendants' discrimination and retaliation, Plaintiff would have obtained his Master's Degree in Women's Studies. *Id.* at 6. On or about October 23, 2013, Plaintiff filed an administrative complaint against TWU with the Department of Education's Office for Civil Rights, which was denied on February 21, 2014, for insufficient evidence from which the Department of Education could infer discrimination. *Id.* at 3.

On September 4, 2014, Plaintiff filed this civil action against the TWU Defendants (Dkt. #1). Plaintiff's live pleading in this case is his Fifth Amended Complaint, filed on September 18, 2015 (Dkt. #86). The Court has construed Plaintiff's Fifth Amended Complaint (and other pleadings) to assert claims against the TWU Defendants for:<sup>1</sup> (1) defamation (Dkt. #86 at 15-16); (2) fraud (Dkt. #86 at 2-3, 8, 11-14, 22); (3) intentional infliction of emotional distress (Dkt. #86 at 22); (4) negligent infliction of emotional distress (Dkt. #86 at 22); (5) public disclosure of private facts (Dkt. #86 at 4); (6) negligence (Dkt. #86 at 5, 16-17); (7) Texas Deceptive Trade Practices Act ("DTPA") (Dkt. #86 at 4); (8) Fourteenth Amendment procedural due process (Dkt. #86 at 4, 8, 15, 24); (9) Fourteenth Amendment substantive due process (Dkt. #86 at 4, 8, 15, 21); (10) Fourteenth Amendment equal protection (Dkt. #86 at 8, 15, 21); (11) Racketeer Influenced and Corrupt Organizations Act ("RICO") (Dkt. #86 at 4, 6); (12) Commerce Clause (Dkt. #86 at 7, 8); (13) Title II of the Americans with Disabilities Act ("ADA") (Dkt. #86 at 7, 9-10); (14) 18 U.S.C. § 1346 (Dkt. #86 at 18); (15) 28 U.S.C. § 1331 (Dkt. #86 at 18); (16) False Claims Act ("FCA") (Dkt. #86 at 7); (17) Federal Tort Claims Act

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<sup>1</sup> The Court notes that the list of claims in the Magistrate Judge's report and recommendation omitted numbers "7" and "8" (*see* Dkt. #100 at 4). However, after reviewing the report and recommendation, and all other relevant pleadings, the Court concludes that this is a typographical error. The Magistrate Judge's list was misnumbered but no claims were omitted from consideration.

(“FTCA”) (Dkt. #86 at 7); (18) Section 504 of the Rehabilitation Act (“Section 504”) (Dkt. #86 at 7, 9-10); (19) Title VII of the Civil Rights Act of 1964 (“Title VII”) (Dkt. #86 at 7, 9-10); (20) Title IX of the Education Amendments of 1972 (“Title IX”) (Dkt. #86 at 7, 9-11); (21) “white collar crimes” (Dkt. #86 at 6, 22); (22) conspiracy to defraud (Dkt. #86 at 4, 5); (23) entrapment (Dkt. #86 at 3, 22); (24) legacy preference corruption (Dkt. #71 at 5); and (25) retaliation (Dkt. #86 at 6).<sup>2</sup>

On August 10, 2015, the TWU Defendants filed a Second Amended Motion to Dismiss (Dkt. #78). On August 27, 2015, Plaintiff filed a response to the TWU Defendants’ Motion to Dismiss (Dkt. #82); and on September 9, 2015, the TWU Defendants filed a Reply (Dkt. #84). On September 18, 2015, Plaintiff filed his Fifth Amended Complaint, which is the live pleading in this action (Dkts. #86). On December 22, 2015, the Court entered an Order requiring the TWU Defendants to file a brief regarding the Eleventh Amendment immunity defense claimed by the TWU Defendants, as well as the applicability, if any, to each of Plaintiff’s causes of action asserted in his live Fifth Amended Complaint (Dkt. #93). The TWU Defendants filed their Supplemental Brief on Eleventh Amendment Immunity Grounds in Support of Motions to Dismiss on January 8, 2016, in accordance with the Court’s Order (Dkt. #96). The Magistrate Judge entered a report and recommendation on February 5, 2016, recommending dismissal of each of Plaintiff’s claims against the TWU Defendants (Dkt. #100). On February 18, 2016, Plaintiff timely filed objections (Dkt. #101). Also on February 18, 2016, Plaintiff filed a further Motion to Appoint Counsel (Dkt. #102). On March 3, 2016, the TWU Defendants filed a Response to Plaintiff’s Objections (Dkt. #103), and on March 7, 2016, Plaintiff filed a Reply to the TWU Defendants’ Response (Dkt. #104).

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<sup>2</sup> Plaintiff objects to the inclusion of the DTPA claim in this list, advising the Court by way of his objections that he had intended this claim to be removed and/or dropped previously (*see* Dkt. #101 at 2; *infra* page seven).

## PLAINTIFF'S OBJECTIONS

Plaintiff has objected to the Magistrate Judge's report and recommendation on seven grounds.<sup>3</sup> Specifically, Plaintiff objects to (1) the Magistrate Judge's use of an "inaccessibly heightened" pleading standard; (2) the Magistrate Judge's reference to the DTPA (a cause of action Plaintiff alleges he previously agreed to remove from his case); (3) the Magistrate Judge's reference to and/or reliance on the TWU Defendants' Supplemental Brief related to Eleventh Amendment immunity (Dkt. #96); (4) certain alleged factual errors in the Magistrate Judge's report and recommendation; (5) the Magistrate Judge's use of "subjective" rather than "objective" language; (6) the Magistrate Judge's focus on "cosmetic" symptoms rather than "structural" causes; and (7) six specific sentences in the Magistrate Judge's report and recommendation (*see* Dkt. #101). Plaintiff's objections, as stated however, have no effect and/or impact on the majority of the findings and conclusions of the Magistrate Judge (*see* Dkt. #100).

To reiterate, the Magistrate Judge specifically recommended that:

- (1) Each of Plaintiff's claims against the TWU Defendants<sup>4</sup> in their official capacities (for defamation, fraud, intentional infliction of emotional distress, negligent infliction of emotional distress, public disclosure of private facts, negligence, DTPA, Fourteenth Amendment violations, RICO, the Commerce Clause, the ADA, 28 U.S.C. § 1331, 18 U.S.C. § 1346, FCA, and FTCA) be dismissed because they are precluded by Eleventh Amendment immunity (Dkt. #100 at 22).

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<sup>3</sup> The first and ninth paragraphs in Plaintiff's Objections are entitled/listed as objections; however, therein Plaintiff merely comments (as opposed to objects) on the Magistrate Judge's report and recommendation (*see* Dkt. #101 at 1, 5). Accordingly, the Court does not address such comments herein.

<sup>4</sup> Again, the TWU Defendants encompass Texas Woman's University collectively with each of the Individual Defendants, Ann Stuart, Robert Neely, Ann Staton, Jennifer Martin, Daniel Miller, Barbara Presnall, AnaLouise Keating, Linda Rubin, Stephen Souris, Claire Sahlin, Christian Hart, and Danielle Phillips. The Individual Defendants include Ann Stuart, Robert Neely, Ann Staton, Jennifer Martin, Daniel Miller, Barbara Presnall, AnaLouise Keating, Linda Rubin, Stephen Souris, Claire Sahlin, Christian Hart, and Danielle Phillips.



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