

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

FILED  
BILLINGS DIV.  
2010 FEB 5 AM 11 07  
PATRICK E. DUFFY, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

**KERRY REX MIESSNER,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **JAY GRANT, NICOLE BUGNI,** )  
 **ROCKO MULCAHY, MEDICAL** )  
 **STAFF, et al.,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**CV-09-82-BU-RFC**

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE**

On January 12, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted. Magistrate Judge Ostby further recommends the docket reflect that the filing of this action count as one strike against Plaintiff, pursuant to 28 U.S.C. § 1915(g).

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the January 12, 2010 Findings and Recommendation.

Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

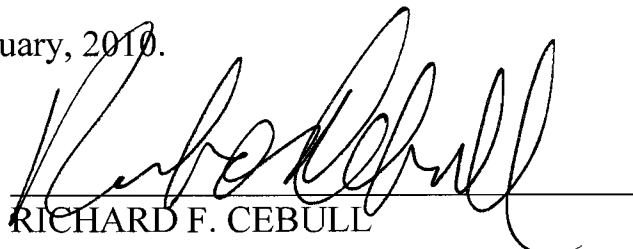
Plaintiff's federal claims arise under the Eighth Amendment of the United States Constitution for denial of dental care. Plaintiff alleged a claim of denial of medical treatment but did not sufficiently allege what each Defendant did wrong. Accordingly, Plaintiff failed to state a claim against the individual Defendants. Plaintiff was given an opportunity to file an amended complaint, and was advised that if he failed to amend his complaint, the Court may dismiss this action. Plaintiff failed to file an amended complaint. Therefore, this matter must be dismissed for failure to state a claim upon which relief may be granted against the named defendants.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Complaint is **DISMISSED** for failure to state a claim upon which relief may be granted against the named defendants.

The Clerk of Court is directed to close this matter and enter judgment in favor of Defendants, pursuant to Rule 58, F.R.Civ.P. The Clerk of Court is also directed to have the docket reflect that this dismissal counts as a strike, pursuant to 28 U.S.C. § 1915(g) based upon Plaintiff's failure to state a claim upon which relief can be granted. The Clerk of Court is also directed to have the docket reflect that the Court certifies, pursuant to Rule 24(a)(3)(A) F.R.App.P. that any appeal of this decision would not be taken in good faith.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 5 day of February, 2010.

  
RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE