

**FILED**  
APR 30 2010  
By PATRICK E. DUFFY, CLERK  
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

BRENT BROWN,	)	CV 09-29-H-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
DR. TRISTAN KOHUT,	)	
	)	
Defendant.	)	
_____	)	

Defendant Dr. Tristan Kohut filed his Motion to Dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on February 25, 2010. Defendant Kohut requested dismissal of this matter based upon Plaintiff's failure to exhaust his administrative remedies. Plaintiff Brent Brown did not file a response to the Motion. However, Plaintiff's failure to respond was not deemed as consent to Defendant's motion and it was fully reviewed to determine whether dismissal was

appropriate. United States Magistrate Judge Keith Strong entered Findings and Recommendation in this matter on March 30, 2010. Plaintiff Brown did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong’s recommendation and therefore adopt it in full.

IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (dkt #17) are adopted in full. Defendant’s Motion to Dismiss (dkt #12) is GRANTED and the claims against Defendant Dr. Tristan Kohut are DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Civil Procedure that any appeal of this decision would not be taken in good faith. It is sufficiently clear that Plaintiff’s failure to exhaust his administrative remedies demands dismissal and no reasonable person could suppose an appeal would have merit. The Clerk of Court is directed to enter

judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Dated this 30<sup>th</sup> day of April, 2010.

A handwritten signature in black ink, appearing to read "DMolloy", written above a horizontal line.

---

Donald W. Molloy, District Judge  
United States District Court