

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

FILED
BILLINGS DIV.
2011 JAN 24 AM 10 19

ADAM J. HEITKEMPER,

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CV-10-62-BLG-RFC

PAID BY DEPT. OF JUSTICE
BY

Plaintiff,

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vs.

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

**OFFICER SHIRLEY, SGT.
SMART, SGT. WONG,
OFFICER WEB, AND LT.
NEITER,**

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Defendants.

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On December 21, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court grant HeitKemper's Motion to Dismiss.

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 December 21, 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).

Plaintiff seeks dismissal of the case, without opposition from Defendant.

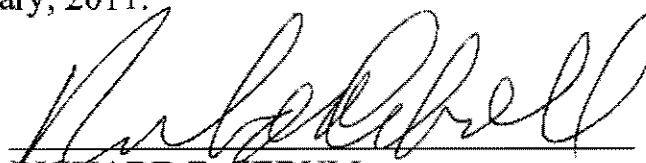
After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that HeitKemper's Motion to Dismiss [*doc. 13*] is **GRANTED** and this matter is **DISMISSED WITHOUT PREJUDICE**.

The Clerk of Court is directed to enter Judgment in this matter and close this case. 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 24 day of January, 2011.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE