

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

FILED

DEC 3 2020

Clerk, U S District Court
District Of Montana
Billings

AUDRY WALKER,

Plaintiff,

vs.

JEANNIE HANSEN, BOBBY POTTS,
KURTIS WOEPPEL, KENTOR
STRADINGER, KAITLIN
MCMULLEN, ALEJANDRO
COCOA, and MEDICAL STAFF,

Defendants.

CV 20-06-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on November 12, 2020. (Doc. 11.) The Magistrate recommended that Plaintiff Audry Walker's Amended Complaint should be dismissed pursuant to 28 U.S.C. §§ 1915 and 1915A. (*Id.* at 2).

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendations. Federal Rule of Civil Procedure 6(d) extends that period by 3 days when a party is served by mail. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendations 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).

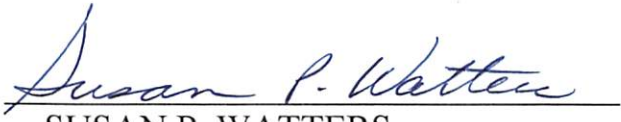
After reviewing the Findings and Recommendations, this Court does not find that the Magistrate committed clear error. To support an Eighth Amendment medical claim, a prisoner must demonstrate “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Evidence of negligence or lack of ordinary care alone will not suffice. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). Ms. Walker’s Amended Complaint failed to satisfy this burden. The Amended Complaint alleges only medical negligence with no evidence of deliberate indifference to her medical needs. The Amended Complaint therefore fails to state a cognizable legal claim.

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 11) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Ms. Walker’s Amended Complaint is DISMISSED pursuant to 28 U.S.C. § 1915A(b) for failure to state a claim upon which relief may be granted. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure. 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 Appellate Procedure that any

appeal of this decision would not be taken in good faith. The Clerk of Court is further directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Ms. Walker failed to state a claim upon which relief may be granted.

DATED this 3rd day of December, 2020.



SUSAN P. WATTERS
United States District Judge