

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

TIMOTHY SCHOEN,
Plaintiff,

v.

DARRELL BELL, et al.,
Defendants.

CV-17-39-GF-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on December 11, 2017. (Doc. 7.) No party filed objections.

Given that no objections were filed, the Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

I.BACKGROUND

Plaintiff Timothy Schoen filed an Amended Complaint on July 31, 2017. (Doc. 9.) Judge Johnston issued an Order on November 6, 2017, finding that

Schoen's Complaint failed to state a claim upon which relief could be granted. (Doc. 11.) Judge Johnston's Order provided Schoen an opportunity to file a second amended complaint on or before November 30, 2017. (Doc. 11 at 26.) Schoen has failed to file an amended complaint.

II.DISCUSSION

Judge Johnston recommends dismissal for Schoen's failure to file a second amended complaint. (Doc. 12 at 2.) Federal Rule of Civil Procedure 41(b) provides that the Court may dismiss an action for failure to comply with a court order. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

The Court notes Schoen's *pro se* status. The Court must "liberally construe" *pro se* filings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nothing in the record indicates that Schoen has made an attempt to comply with Judge Johnston's order. Schoen's *pro se* status cannot overcome his failure to file a second amended complaint.

III.ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 12) is **ADOPTED IN FULL**. Schoen's Complaint is **DISMISSED** for failure to state a federal claim.

The Clerk of Court is directed to close this matter and enter judgment in favor of Defendants 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. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Schoen failed to state a claim upon which relief may be granted.

DATED this 31st day of January, 2018.



Brian Morris
United States District Court Judge