

**FILED**

AUG 07 2015

Clerk, U.S. District Court  
District Of Montana  
Missoula

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

THOMAS SCOTT ANDERSON,

Plaintiff,

vs.

MONTANA DEPARTMENT OF  
CORRECTIONS, MIKE BATISTA,  
Director of the Montana Department of  
Corrections, LEROY KIRKEGARD,  
Warden of the Montana State Prison,  
and DR. KOHUT, individually and in  
their official capacities,

Defendants.

CV 15-31-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered Findings and Recommendations on May 12, 2015, recommending that Defendant Montana Department of Corrections be dismissed. Plaintiff failed to timely object to the

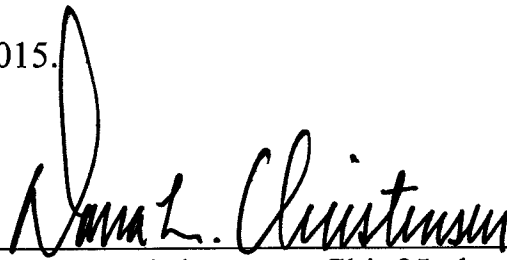
Findings and Recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is 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). There is no clear error in Judge Johnston’s Findings and Recommendation and the Court adopts them in full. Because the parties are familiar with the facts of this case they will only be included here as necessary to explain the Court’s order.

There is no clear error in Judge Johnston’s finding that the Montana Department of Corrections is not a proper party in this action pursuant to the Eleventh Amendment of the United States Constitution. The Eleventh Amendment bars suit in federal court against state agencies, absent a Congressional abrogation of immunity or express waiver by the State. The Montana Department of Corrections is an agency of the State of Montana. Congress has not abrogated Eleventh Amendment immunity and the State of Montana has not waived the immunity.

IT IS ORDERED that Judge Johnston’s Findings and Recommendation (Doc. 4) are ADOPTED IN FULL. Defendant Montana Department of

Corrections is DISMISSED.

Dated this 7<sup>th</sup> day of August, 2015.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

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Dana L. Christensen, Chief Judge  
United States District Court