

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

FILED
OCT 04 2017
Clerk, U.S. District Court
District Of Montana
Missoula

FORREST SCOTT SMART,

Plaintiff,

vs.

LEROY KIRKEGARD, et al.,

Defendants.

CV 15-87-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered Findings and Recommendations in this case on June 17, 2016, recommending that Defendants Kirkegard, Beeson, Strutzel, Doe 1, Doe 2, Herman, McMahon, Redfern, Kremer, and Hart be dismissed. Judge Johnston also recommended that Counts I and III of Plaintiff Forrest Scott Smart's ("Smart") Complaint (Doc. 2) be dismissed without prejudice. Smart did not object to the Findings and Recommendations, and so has waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has

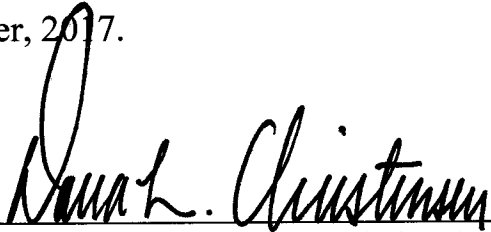
been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000)
(citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusion that Smart failed to state claims upon which relief could be granted in Counts I and III of his Complaint. As a result, the Defendants responsive to Counts I and III alone should be dismissed.

Accordingly, IT IS ORDERED that Judge Johnston’s Findings and Recommendations (Doc. 14) is ADOPTED IN FULL. Defendants Kirkegard, Beeson, Strutzel, Doe 1, Doe 2, Herman, McMahon, Redfern, Kremer, and Hart are DISMISSED.

IT IS FURTHER ORDERED that Counts I and III of the Complaint (Doc. 2) are DISMISSED WITHOUT PREJUDICE.

DATED this 4th day of October, 2017.



Dana L. Christensen, Chief Judge
United States District Court