

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

**FILED**

MAR 01 2016

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

ERIC BROSTEN,

Plaintiff,

vs.

STEVE DAINES and RYAN ZINKE,

Defendants.

CV 16-01-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this matter on January 26, 2016, recommending dismissal of Plaintiff Eric Brosten's ("Brosten") Complaint. Judge Johnston also recommends denial of Brosten's Motion to Proceed in Forma Pauperis and an *ex parte* motion for protection. Brosten failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 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 Brosten's Complaint should be dismissed because it is frivolous and lacks any basis in fact or law. Brosten's allegations are simply not plausible. Further, the Court agrees that Brosten's Complaint cannot be cured by amendment and that all other motions should be denied.

IT IS ORDERED that:

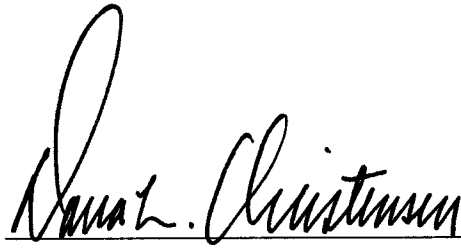
(1) Judge Johnston's Findings and Recommendations (Doc. 7) are ADOPTED IN FULL.

(2) Plaintiff Eric Brosten's request to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1) (Doc. 1) is DENIED.

(3) Brosten's *ex parte* motion (Doc. 3) is DENIED.

(4) This action is DISMISSED. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Dated this 1<sup>st</sup> day of March, 2016.

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

Dana L. Christensen, Chief Judge  
United States District Court