

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

FILED

MAY 17 2017

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

DANIEL CAGEY,

Plaintiff,

vs.

C/O MARTHALER,

Defendant.

CV 16-17-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this action on April 17, 2017, recommending dismissal of this matter. Plaintiff Daniel Cagey's ("Cagey") 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 this matter should be dismissed. Cagey failed to respond or otherwise comply with numerous orders issued by Judge Johnston. Because Cagey failed to prosecute this action, the Court agrees with Judge Johnston that the factors discussed in *Henderson v. Duncan*, 779 F.2d 1421 (9th Cir. 1986) and *Ferdikv. Bonzelet*, 963 F.2d 1258 (9th Cir. 1992), weigh in favor of dismissal.

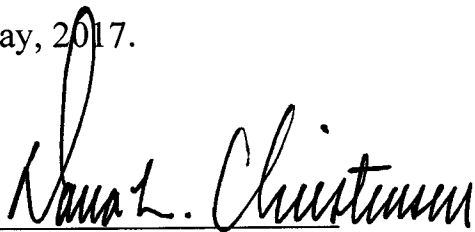
Accordingly, there being no clear error in Judge Johnston's Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 23) are ADOPTED IN FULL.

(2) This matter is DISMISSED pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to close this matter, enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure, and terminate all pending motions.

(3) 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.

Dated this 17th day of May, 2017.


Dana L. Christensen, Chief Judge
United States District Court