

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

**FILED**  
NOV 08 2016  
Clerk, U.S. Courts  
District Of Montana  
Missoula Division

TIMOTHY CRAIG HAITHCOX,

Plaintiff,

vs.

LEO DUTTON, ERIC GILBERTSON,  
ALAN HUGHES, DAN O'MALLEY,  
WILLIAM PANUS, and ARLEEN  
HIBBARD,

Defendants.

CV 16-59-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on October 18, 2016, recommending dismissal of Plaintiff Timothy Haithcox's ("Haithcox") claims for injunctive and declaratory relief. The parties failed to timely object to the Findings and Recommendations, and so waived their 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).

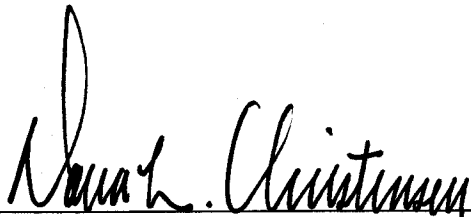
Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusion that Haithcox’s claims for injunctive and declaratory relief directly relate to his ongoing criminal prosecution in Lewis and Clark County, Montana. The Court agrees with Judge Johnston that any decisions rendered on Haithcox’s claims would unduly interfere with the ongoing state matter and, as a result, this Court should abstain from ruling at this time. Consequently, Haithcox’s claims for injunctive and declaratory relief shall be dismissed without prejudice. However, as ordered by Judge Johnston, Haithcox’s claims for monetary damages will be stayed pending that conclusion of his state court proceedings.

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. 8) are ADOPTED IN FULL.

(2) Plaintiff Haithcox’s claims for injunctive and declaratory relief advanced against all Defendants are DISMISSED without prejudice.

Dated this 8<sup>th</sup> day of November, 2016

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

Dana L. Christensen  
Dana L. Christensen, Chief Judge  
United States District Court