

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

JOSEPH WAYNE TICE,

Plaintiff,

v.

DR. KOHUT,

Defendant.

CV-17-58-H-BMM-JTJ

**ORDER ADOPTING MAGISTRATE  
JUDGE'S FINDINGS AND  
RECOMMENDATIONS**

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on April 11, 2018. (Doc. 20.) No party filed objections.

Given that no objections were filed, the Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

## **I.BACKGROUND**

Plaintiff Joseph Tice (“Tice”) filed his Amended Complaint on June 14, 2017. (Doc. 3). Defendant Dr. Tristan Kohut (“Dr. Kohut”) filed his Answer on January 5, 2018. (Doc. 11.) The Clerk of Court mailed a consent form to Tice on January 12, 2018. (Doc. 13.) The consent form was returned undeliverable to the Clerk on January 26, 2018. (Doc. 14.)

Dr. Kohut filed a motion to dismiss on March 8, 2018. (Doc. 15.) Dr. Kohut cited as grounds for dismissal Tice’s failure to advise the Court of his change of address in accordance with Rule 41(b) of the Federal Rules of Civil Procedure and Local Rule 5.2. *Id.*

This Court referred the case to United States Magistrate Judge John Johnston on March 14, 2018. (Doc. 18.) The Clerk of Court mailed the referral order to Tice. That mail was returned undeliverable on March 29, 2018. (Doc. 19.) Judge Johnston issued his Findings and Recommendations on April 11, 2018. (Doc. 20.) The Clerk mailed a copy of the Findings and Recommendations to Tice. The Findings and Recommendations were returned as undeliverable on April 18, 2018. (Doc. 21.)

## **II.DISCUSSION**

Judge Johnston recommends dismissal without prejudice for Tice’s failure to notify the Court of his change of address. (Doc.20 at 2.)

This District's Local Rule 5.2(b) provides that the Court may dismiss a complaint without prejudice when a document has: (1) been returned as undeliverable, and (2) the Court does not receive within 60 days of the return a written communication updating the party's address for service.

The 60 day period in which Tice was to file such notice lapsed on March 27, 2018. Nothing in the record indicates that Tice has filed a written notice informing the Court of his change of address.

### III. ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 20) is **ADOPTED IN FULL**. Tice's Complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to L.R. 5.2(b).

DATED this 10th day of May, 2018.



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Brian Morris  
United States District Court Judge