

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

MICHAEL ALBERT,

Plaintiff,

vs.

MONTANA DEPARTMENT OF  
CORRECTIONS, REGINALD D.  
MICHAEL, MISSOULA COUNTY,  
CORRECTIONAL HEALTH  
PARTNERS, PAUL REES, HEIDI  
ABBOTT, MELISSA SCHARF,  
ALLY CARL, TRISTAN KOHUT,  
CONNIE WINNER, KIMBERLY  
FISK, JORDEN MCDONALD,  
ALVIN FODE, JIM SALMONSEN,  
STEVEN WEBER, MIKE HERBERT,  
PATRICK MARTIN, STEVE  
KREMER, RUSS DANAHER,  
LEROY KIRKEGARD, ABBY  
MARTIN, and LESLIE THORNTON,

Defendants.

CV 17-69-H-BMM

ORDER ADOPTING MAGISTRATE  
JUDGE'S FINDINGS AND  
RECOMMENDATIONS

United States Magistrate Judge John Johnston entered Findings and Recommendations in this case on March 14, 2019. (Doc. 56.) Judge Johnston recommended Defendant Missoula County's Motion to Dismiss (Doc. 36) should be granted in part and denied part. (Doc. 56 at 22-23.) Judge Johnston recommended that State Defendants Motion to Dismiss (Doc. 50) likewise should

be granted in part and denied in part. (Doc. 56 at 23-24.)

Neither party filed objections. The Court reviews findings and recommendations not objected to for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). 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). The Court finds no error in Judge Johnston’s Findings and Recommendations and adopts them in full.

Accordingly, IT IS ORDERED:

1. Judge Johnston’s Findings and Recommendations (Doc. 56) is ADOPTED IN FULL.
2. Missoula County’s Motion to Dismiss (Doc. 36) is GRANTED IN PART and DENIED IN PART.
  - a. Albert’s § 1983 *Monell* claims against Missoula County, ADA claim, Rehabilitation Act claim, negligence per se claim, and Montana Constitutional claim of right to individual dignity as alleged in Counts I, II, IV, V, VII, and IX is DISMISSED WIHTOUT PREJUDICE.
  - b. Albert’s medical malpractice claim against Missoula County as alleged in Count X is DISMISSED WITH PREJUDICE.
3. State Defendants’ Motion to Dismiss (Doc. 50) is GRANTED IN PART and DENIED IN PART.
  - a. Defendants Reginald D. Michael and Leroy Kirkegard are DISMISSED from Albert’s § 1983 claims alleged in Counts I, II, and III.

- b. Defendant Jim Salmonsens is DISMISSED from Albert's § 1983 claims alleged in Counts II and III.
- c. Defendants Montana Department of Corrections, Michael, employees or agents of MSP and the Montana Department of Corrections, and Wardens Salmonsens and Kirkegard are DISMISSED from Counts IV and V. The State of Montana is SUBSTITUTED as the sole defendant in Counts IV and V.
- d. All individual named State Defendants are DISMISSED WITH PREJUDICE from state law claims in Counts VI through X. The State of Montana is SUBSTITUTED in their place.
- e. Albert's Montana State Constitutional right to individual dignity claim in Count IX is DISMISSED.
- f. Count XI is DISMISED as a separate count. Albert is allowed to seek punitive damages as a form of relief.

DATED this 16<sup>th</sup> day of April, 2019.



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Brian Morris  
United States District Court Judge

