

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

TIMOTHY EDWARD SPENCER,

Plaintiff,

vs.

DR. VIRGINIA HILL, DR. STEVEN
PALMERI, NURSE LORI
SWANSON, NURSE JACK
PRESTON, RICHARD OPPER, JOHN
GLUCKERT, and DR. PERINEAN,

Defendants.

CV 18-28-H-BMM-JTJ

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

Plaintiff Timothy Edward Spencer ("Spencer") filed a Motion to Proceed in Forma Pauperis and submitted an affidavit in support on February 8, 2018. (Doc. 1.) Spencer filed a Complaint on February 8, 2018. (Doc. 2.) Defendants filed a motion to compel discovery on August 5, 2019. (Doc. 26.) United States Magistrate Judge John Johnston ordered Spencer to file a response to Defendants' motion to compel on or before September 13, 2019. (Doc. 28.) Judge Johnston advised Spencer that a failure to file a response may result in a recommendation that the matter be dismissed. (*Id.* at 2.) Spencer did not respond.

Judge John Johnston issued Findings and Recommendations on October 4, 2019. (Doc. 29.) Judge Johnston recommended that the Court dismiss the matter pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute and failure to comply with a Court order. (*Id.* at 2, 5.)

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *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). Reviewing for clear error and finding none,

IT IS ORDERED that Judge Johnston’s Findings and Recommendations (Doc. 29) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that this matter is **DISMISSED WITH PREJUDICE** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The Clerk of Court is directed to terminate all pending motions, close this matter, and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

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. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

DATED this 8th day of November, 2019.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Brian Morris
United States District Court Judge