

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

HERMAN VAN UDEN,

Plaintiff,

vs.

ASSISTANT WARDEN JIM
SOLOMENSEN, DR. REES and
INFIRMARY WORKER JANET,

Defendants.

CV 18-69-H-BMM-JTJ

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

Plaintiff Herman Van Uden (“Van Uden”) filed a Motion to Proceed in Forma Pauperis and submitted an affidavit in support on June 11, 2018. (Doc. 1.) Van Uden also filed a Complaint on June 11, 2018. (Doc. 2.) Defendant Ress filed a motion for summary judgment on August 29, 2019. (Doc. 55.) Van Uden sent a letter to the Clerk of Court on September 13, 2019, indicating that he will no longer send legal mail from Montana State Prison, that he will be out of prison in about 10 or 11 months, and that he plans to start his case over after he gets out of prison. (Doc. 59.)

United States Magistrate Judge John Johnston issued Findings and Recommendations on October 9, 2019. (Doc. 61.) Judge Johnston construed

Van Uden's August 30, 2019 Letter (Doc. 59) as a motion for voluntary dismissal pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. (Doc. 61 at 2.) Judge Johnston recommends that the Court dismiss this case with prejudice. (*Id.* at 2-3.) Judge Johnston notified Van Uden that he had 14 days from the date of Judge Johnston's Recommendations to either (1) withdraw the motion for voluntary dismissal; or (2) consent to the dismissal despite the condition that it be dismissed with prejudice. (*Id.* at 3.) Judge Johnston clarified that a failure to respond within the 14-day window would constitute a consent to dismissal with prejudice. (*Id.*)

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. 61) are **ADOPTED IN FULL**.

The Court construes Van Uden's August 30, 2019 Letter (Doc. 59) as a motion for voluntary dismissal pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. Accordingly, **IT IS FURTHER ORDERED** that Van Uden's motion for voluntary dismissal (Doc. 59) is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

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 underneath it.

Brian Morris
United States District Court Judge