

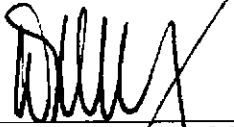


Judge Lynch issued Findings and Recommendations in which he recommends dismissal of the Complaint for lack of jurisdiction. Judge Lynch explains that Defendant Hunt is a private citizen and not a state actor, foreclosing jurisdiction under 42 U.S.C. § 1983. The Court does not have diversity jurisdiction, Judge Lynch concludes, because the parties are both residents of the State of Montana and the amount in controversy does not exceed \$75,000.00. The Magistrate finds that these jurisdictional defects cannot be cured with the filing of an amended complaint.

Plaintiff Kelly did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation 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). I can find no clear error with Judge Lynch's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED for lack of jurisdiction, and the motion for temporary restraining order and/or preliminary injunction (Doc. No. 4) is DENIED as moot.

DATED this 4<sup>th</sup> day of September, 2008.

  
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Donald W. Molloy, District Judge  
United States District Court