

FILED

SEP 25 2013

Clerk, U.S. District Court
District Of Montana
Missoula

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

STANFORD ALLEN LEWIS, JR.,

Plaintiff,

vs.

EXTRADITION TRANSPORT OF
AMERICA,

Defendant.

CV 13-138-M-DWM-JCL

ORDER

This matter comes before the Court on a Motion for Summary Judgment filed by Plaintiff Stanford Allen Lewis, Jr. Mr. Lewis asserts a claim under 42 U.S.C. § 1983, alleging that Defendant Extradition Transport of America unlawfully deprived him of his constitutional rights under the Eighth and Fourteenth Amendments. United States Magistrate Judge Jeremiah C. Lynch entered Findings and a Recommendation on Mr. Lewis' Motion on July 31, 2013. Pursuant to 28 U.S.C. § 636(b)(1), objections to the Findings and Recommendation entered by Judge Lynch were due by August 19, 2013. No objections were filed.

The Court reviews the findings and recommendation of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus.*

Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only 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).

After a review of Judge Lynch’s Findings and Recommendation, I find no clear error. While Mr. Lewis’ allegations are similar to those raised in *Avery v. Extradition Transport of America*, Civil Cause No. 11–153–M–DWM, Mr. Lewis’ Motion is premature. The Court ordered entry of judgment in favor of Avery and against Extradition Transport in that matter because Extradition Transport did not respond to Avery’s complaint. In this case, the deadline for Defendant’s appearance has not yet passed. “Although [Rule 56] allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time to file a responsive pleading or other pretrial proceedings have been had.” Fed. R. Civ. P. 56(b) advisory comm. nn. (2010).

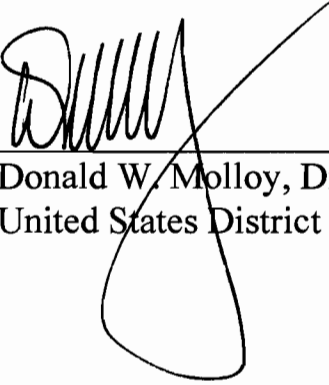
Based on the foregoing, IT IS ORDERED that Judge Lynch’s Findings and Recommendations (doc. 10) are ADOPTED IN FULL. Mr. Lewis’ Motion (doc. 3) is DENIED.

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DATED this 25 day of September, 2013.

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by several vertical strokes, and a long, sweeping horizontal line that extends to the right and then loops back down.

Donald W. Molloy, District Judge
United States District Court