

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

FILED
MAR 21 2017
Clerk, U.S. District Court
District Of Montana
Missoula

ZACHARY WOOTEN,

Plaintiff,

vs.

BNSF RAILWAY COMPANY,
a Delaware corporation,

Defendant.

CV 16-139-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on March 16, 2017, recommending denying Plaintiff Zachary Wooten's ("Wooten") renewed motion for preliminary injunction or, in the alternative, a temporary restraining order. Wooten failed to timely object to the Findings and Recommendation, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C).¹ This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left

¹ Because the investigation of union representative Mark Voelker is set to take place on March 22, 2017, Judge Lynch ordered that any objections to the Findings and Recommendation be lodged by March 20, 2017.

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). Because the parties are familiar with the facts of this case, they will not be repeated here.

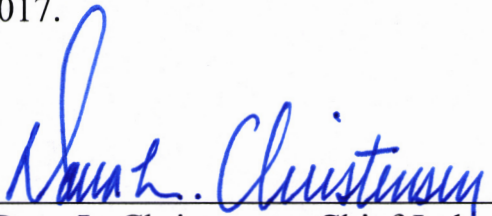
Having reviewed the Findings and Recommendation, the Court finds no clear error in Judge Lynch’s conclusion that Wooten’s motion should be denied because he has not shown that he will suffer irreparable harm in the absence of a preliminary injunction or temporary restraining order. Importantly, the harm alleged by Wooten, i.e., that BNSF’s investigation of Mark Voelker may harm his case, is too speculative to establish a showing of irreparable harm. Further, many of the other harms alleged by Wooten involve alleged harms to third parties not before the Court. The Court agrees with Judge Lynch that harms alleged against third parties are not relevant to the irreparable harm prong of the *Winter* analysis.

Accordingly, there being no clear error in Judge Lynch’s Findings and Recommendation, IT IS ORDERED that:

(1) Judge Lynch’s Findings and Recommendation (Doc. 34) are ADOPTED IN FULL.

(2) Plaintiff Zachary Wooten’s Second Motion for Preliminary Injunction or Temporary Restraining Order (Doc. 30) is DENIED.

Dated this 21st day of March, 2017.



Dana L. Christensen, Chief Judge
United States District Court