

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

|                         |   |                           |
|-------------------------|---|---------------------------|
| SHAWN WAYNE KINNINGHAM, | ) |                           |
|                         | ) |                           |
| Plaintiff,              | ) |                           |
|                         | ) |                           |
| vs.                     | ) | No. 2:15-cv-00144-LJM-MJD |
|                         | ) |                           |
| ERNIE RUSH,             | ) |                           |
|                         | ) |                           |
| Defendant.              | ) |                           |

**REPORT AND RECOMMENDATION ON PLAINTIFF’S MOTION TO DISMISS**

This matter comes before the Court on Plaintiff Shawn Wayne Kinningham’s Motion to Dismiss. [Dkt. 50.]

This matter was scheduled for a settlement conference on June 17, 2016. [Dkt. 44.] One day prior thereto, Plaintiff moved the Court to dismiss the case. [Dkt. 50.] The Court vacated the settlement conference and scheduled a telephonic hearing on Plaintiff’s motion. [Dkt. 51.] Plaintiff responded to the Court’s electronic mail advising him of the hearing and further communicated with the Court confirming his knowledge of and availability for the hearing on the motion to dismiss.

Defendant appeared by counsel for the hearing on the motion to dismiss; Plaintiff failed to appear. [Dkt. 52.] During the hearing, Defendant confirmed he did not object to the motion to dismiss. [*Id.*] No further briefing regarding the motion has been filed.

In light of the fact that the motion is unopposed, the Magistrate Judge recommends that Plaintiff’s Motion to Dismiss [Dkt. 50] be **GRANTED** and that this matter be **DISMISSED** without prejudice.

Any objections to the Magistrate Judge's Report and Recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), and failure to timely file objections within fourteen days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

Dated: 15 JUL 2016

A handwritten signature in black ink, appearing to read "Mark J. Dinsmore", is written over a horizontal line.

Mark J. Dinsmore  
United States Magistrate Judge  
Southern District of Indiana

Distribution:

Service will be made electronically  
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And by United States Mail to:

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