

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

MICHAEL ANTONELLI

PLAINTIFF

V.

2:08-cv-00003-JJM-JJV

MARTHA DEPOORTER, Correctional Counselor, Federal
Correctional Complex, Forrest City, Arkansas; and
BILLY PHILLIPS, Counselor, Federal Correctional
Complex, Forrest City, Arkansas

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence to be proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

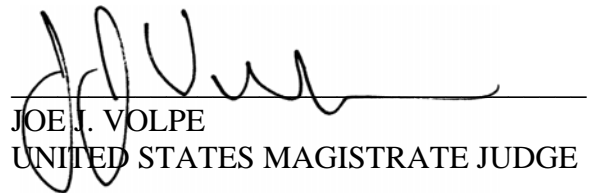
DISPOSITION

Plaintiff, while incarcerated, filed this *pro se* action pursuant to *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). A full outline of the extensive procedural history of this case and its companion cases can be found in Document No. 14 of this case and will not be repeated here. Plaintiff has now been released from prison, and has provided the Court with his current address. Mr. Antonelli made a timely demand for a jury trial; however, before expending the resources inherent in such a trial, the Court scheduled a pre-jury evidentiary hearing to determine whether this case should proceed to a jury trial. Plaintiff filed a Response (Doc. No. 73) indicating his intent to continue prosecution of this case and acknowledging the scheduling of this hearing. However, when the case was called on this date, Plaintiff did not appear and Defendants moved for dismissal of the claims against them for failure to prosecute. For good cause shown,

IT IS THEREFORE RECOMMENDED that this action be DISMISSED without prejudice for failure to prosecute, and all pending motions be dismissed as moot.

IT IS FURTHER RECOMMENDED that the Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations would not be taken in good faith.

DATED this 25th day of January, 2010.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE