

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

REX LEE RITCHIE

PLAINTIFF

v.

Civil No. 08- 2038

MIKE ALLEN;
JEFF MARVIN;
WATERDOWN;
IRWIN;
ALISON; CHRIS; and
LANGLEY

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Now before the Court is the Motion to Dismiss (Doc. 48) filed by Plaintiff. Plaintiff seeks to dismiss his case, without prejudice to the refiling thereof. Plaintiff states he is currently incarcerated and has been unable to “respond to this court’s requests in a timely manner.” Plaintiff further states his attempts to respond to the Court’s requests have been restricted by the Defendants in that his mail has been restricted as has his ability to obtain stamps. Moreover, Plaintiff states he is unable to comply with the Court’s deadline regarding his response to Defendants’ Motion for Summary Judgment.

Therefore, Plaintiff wishes to withdraw his case at this time by having it dismissed without prejudice.¹ The Court was informed, via a phone call with Mr. Burt Newell, attorney for the Defendants, that Defendants have no objection to the granting of Plaintiff’s Motion to Dismiss. Accordingly, it is the recommendation of the undersigned that Plaintiff’s Motion to Dismiss (Doc. 48) be granted and Plaintiff’s Complaint dismissed without prejudice at this time.

¹ Plaintiff should be aware there may be statutes of limitation which could apply to the refiling of his case.

Plaintiff has ten (10) days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Plaintiff is reminded that objections must be both timely and specific to trigger de novo review by the district court.

Dated this 1st day of September, 2009.

/s/ J. Marschewski

HONORABLE JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE