

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM D. DUNNE,

Plaintiff,

v.

D. SMITH, WARDEN, B. AVALOS,  
ASSOCIATE WARDEN, and J. KARGE,  
CAPTAIN,

Defendants.

**CASE NO. CV-1:07-74-BLW**

**REPORT AND  
RECOMMENDATION**

**REPORT**

On September 23, 2010, the parties participated in a telephonic settlement conference supervised by undersigned Magistrate Judge. Plaintiff participated pro se. All defendants participated and were represented by counsel. All parties participated in good faith, but agreed that the issue of whether or not Plaintiff has any viable claim against the currently named defendants is an issue which requires resolution before settlement may be fruitfully explored.

As a result, Plaintiff and Defendants agreed to request the trial judge to extend the time within which and to grant leave to file certain motions which pertain to the issues.<sup>1</sup>

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<sup>1</sup>Judge B. Lynn Winmill issued a Scheduling Order on March 27, 2009. (Docket No. 27). The Order set the deadline for any amendment of the pleadings and joinder of parties for June 26, 2009, discovery for August 21, 2009, and dispositive motions for September 25, 2009.

**REPORT AND RECOMMENDATION - 1**

Plaintiff agreed that Defendants may file a motion for summary judgment on the grounds that Plaintiff has not sued the correct defendants. Defendants agreed that Plaintiff may file any cross motions as well, which may include a motion to amend the Complaint in order to name the correct parties to this lawsuit.

The parties also expressly requested that this Magistrate Judge document the parties' discussions in an "order." Because this matter was referred to this Magistrate Judge for settlement purposes only, he is without authority to grant the parties leave to allow for the additional filings. Instead, this Magistrate Judge submits this Report and Recommendation for consideration and final determination by the presiding judge, Honorable B. Lynn Winmill.

### **RECOMMENDATION**

For the foregoing reasons, IT IS THEREFORE RECOMMENDED that the parties be granted leave to file additional dispositive motions and/or motions for leave to amend the pleadings and to join parties in order to resolve the issue of the proper party defendants in this case.



DATED: **October 1, 2010.**

A handwritten signature in cursive script, appearing to read "Larry M. Boyle".

Honorable Larry M. Boyle  
United States Magistrate Judge