## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

THOMAS SMOGONOVICH,	
Plaintiff,	Case No. CV09-011-S-EJL
vs.	ORDER ADOPTING REPORT AND RECOMMENDATION
CITY OF BOISE and MARY ELIZABETH WATSON et al,	
Defendants.	

On June 23, 2009, United States Magistrate Ronald E. Bush issued his Order and Report and Recommendation in this matter. (Dkt. No. 7). The Order granted Plaintiff's motion for leave to proceed in forma pauperis. (Dkt. No. 1). The Report and Recommendation advised this Court to dismiss the claims of the minor children Plaintiffs, dismiss eleven of the thirteen named Defendants, and to dismiss any criminal claims.

Any party may challenge a Magistrate Judge's proposed recommendation regarding by filing written objections within ten days after being served with a copy of the magistrate's report and recommendation. See 28 U.S.C. § 636(b)(1)(C). The district court may accept, reject, or modify in whole or in part, the findings and recommendations made by the magistrate. Id.; see also Fed. R. Civ. P. 72(b). No objections to the report and recommendation were filed. The Court has reviewed the report and recommendation, the motions, pleadings, and the entire record in this matter. Based upon this review, the Court finds the report and recommendation has appropriately analyzed the issues and made the correct recommendations.

The Court notes that this review of the Report and Recommendation was undertaken with an eye on Ninth Circuit standards regarding *pro se* litigants. See Tucker v. Carlson, 925 F.2d 330 (9th Cir. 1991). In conducting such review, the Court has construed the Plaintiff's pleadings in the most favorable light keeping in mind, however, that *pro se* litigants are held to same procedural rules as counseled litigants. King v. Atiyeh, 814 F.2d 565, 567 (9<sup>th</sup> Cir.

ORDER - Page 1 S:\Orders\Orders09\smogonovich\_rnrLT.wpd 1987). Having done so, the Court is in agreement with the recommendations of Magistrate Judge Bush and will adopt the same.

## **ORDER**

Because the Court finds the Report and Recommendation of Magistrate Judge Bush to be well founded in law, the Court hereby accepts in their entirety, and adopts as its own, the findings made by Magistrate Judge Bush. (Dkt. No. 7). Acting on the recommendation of Magistrate Judge Bush, and this Court being fully advised in the premises,

## **IT IS HEREBY ORDERED** as follows:

- 1) the minor children Plaintiffs are **DISMISSED WITHOUT PREJUDICE**;
- the following named Defendants are **DISMISSED WITHOUT PREJUDICE**: Cary B. Colaianni, City Attorney; Jim A. Birdsall, Boise City

  Housing and Development Manager; Tami Dodel, Boise City Housing

  Property Manager; David H. Beiter, Mayor; David Eberle, Councilperson;

  Alan Shealy, Councilperson; and Jim Tibbs, Councilperson; and
- 3) the criminal claims are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the Plaintiff shall file a pleading within ten (10) days of his receipt of this Order with a physical address for each of the remaining named Defendants. Upon receipt of the physical addresses, the Clerk of the Court shall send the waiver of service of summons form, a copy of the Complaint, a copy of the Report and Recommendation, and a copy of this Order, in compliance with Federal Rule of Civil Procedure 4(d), to said Defendants. If the Defendants do not return the waiver within thirty (30) days, the Clerk of the Court is instructed to provide a Summons and the Complaint to the United States Marshal Service for personal service on those Defendants.

<sup>&</sup>lt;sup>1</sup> Under the Waiver procedure, a defendant has thirty (30) days to sign and return the Waiver. If the defendant actually signs and returns the Waiver, then he or she has an additional sixty (60) days to file an answer.

**IT IS FURTHER ORDERED** that the Plaintiff shall not attempt to conduct discovery until the Defendants have filed an answer in this case, at which time the Plaintiff may begin discovery through Defendants' counsel of record.

DATED: October 2, 2009

Honorable Edward I U. S. District Judge