

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD VAN HORN,

Plaintiff,

vs.

Case No. 12-CV-11880
HON. GEORGE CARAM STEEH

JAMES S. WALTON, C. GOMEZ,
FEDERAL BUREAU OF PRISONS,
BARDSLBY,

Defendants.

_____ /

ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION [DOC. 46]

This matter came before the court on plaintiff Edward Van Horn's motion to strike defendants' ex parte motion, in which plaintiff made the statement that he did not intend to add the Federal Bureau of Prisons as a defendant in his case. Before the court now is only the magistrate judge's report and recommendation concerning the dismissal of the Federal Bureau of Prisons as a named defendant in plaintiff's lawsuit. The magistrate judge took plaintiff at his word in document # 39, paragraph 6, wherein he stated "I had notified the Court that an error was made by the Court, by adding the Federal Bureau of Prisons in my Action."

Plaintiff filed objections to the report and recommendation, explaining that he meant to substitute the United States for the Federal Bureau of Prisons in a tort action brought under the Federal Tort Claims Act. As defendants point out in their response brief, plaintiff failed to meet the administrative exhaustion requirements of the Federal

Tort Claims Act prior to bringing his suit. *Blakely v. United States*, 276 F.3d 853, 864 (6th Cir. 2002). Plaintiff filed his complaint on April 26, 2012, but did not file an administrative claim for damages under the Federal Tort Claims Act with the Bureau of Prisons until September 17, 2012. Now, therefore,

IT IS HEREBY ORDERED that the magistrate judge's report and recommendation is ACCEPTED and the Federal Bureau of Prisons is hereby dismissed.

IT IS FURTHER ORDERED that plaintiff's request to substitute the United States as a defendant is DENIED WITHOUT PREJUDICE pending the exhaustion of his administrative remedies.

Dated: December 5, 2012

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on December 5, 2012, by electronic and/or ordinary mail and on Edward Van Horn, #49115-019, L.S.C.I., Allenwood, P. O. Box 1000, White Deer, PA 17887.

s/Barbara Radke
Deputy Clerk