

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RANDY S. BOWERS and NELSON BOWERS,

Plaintiffs,

DECISION AND ORDER

06-CV-6081L

v.

COUNTY OF SCHUYLER, et al.,

Defendants.

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This Court referred all pretrial matters in this *pro se* case to United States Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b). Plaintiffs had moved for leave to file a second amended complaint and had also requested leave to file a new claim pursuant to 42 U.S.C. § 1983 against defendants Joseph Fazzary and Matthew Hayden.

Magistrate Judge Payson considered all of the motion papers, all pleadings in the case and issued a thorough Report and Recommendation (Dkt. #36) recommending that plaintiffs' motion for leave to file a second amended complaint be granted but that the motion to add a new § 1983 claim be denied.

Notice of the Report and Recommendation was given both to plaintiffs and to defendants and neither side filed any objections to the Magistrate Judge's Report and Recommendation, although the time within which to do so has long since expired. I have reviewed the Report and

Recommendation, as well as the papers filed relative to the relevant motions, and I agree and accept Magistrate Judge Payson's Report and Recommendation. I find no reasons to alter, modify or reverse that Report and Recommendation. I concur basically for the reasons set forth by Magistrate Judge Payson.

#### CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. #36) of United States Magistrate Judge Marian W. Payson. Plaintiffs' motion for leave to file a second amended complaint is granted (Dkt. #24) but the motion to add a new claim pursuant to 42 U.S.C. § 1983 against defendants Fazzary and Hayden (Dkt. #24) is denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 26, 2009.