

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DWAYNE MOSS,

Plaintiff,

DECISION AND ORDER

06-CV-6467L

v.

H. HANRAHAN, et al.,

Defendants.

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This Court referred pretrial motions to United States Magistrate Judge Marian W. Payson, in this civil rights action, pursuant to 28 U.S.C. § 636(b). Magistrate Judge Payson issued a Report and Recommendation and Decision and Order (Dkt. #74) concerning plaintiff's motion to amend the complaint and for various orders relating to discovery.

Magistrate Judge Payson recommended that the Court grant in part and deny in part plaintiff's request to file an Amended Complaint. Plaintiff has filed no objections to that Report. I have reviewed the pleadings and Magistrate Judge Payson's Report and Recommendation, and I agree with her analysis and deny plaintiff's request to amend the complaint to deal with different defendants in a different incident. Therefore, I deny plaintiff's motion to add the allegation referenced in Magistrate Judge Payson's Report and Recommendation and Decision and Order at p. 7, including ¶¶ 70 through 116, 120, 122 and 123 of the Proposed Amended Complaint. I also

deny defendants' motion to join the 14 defendants listed by Magistrate Judge Payson on p. 7 of her Report and Recommendation and Decision and Order. I do, though, agree with Magistrate Judge Payson and grant plaintiff permission to amend the complaint as to ¶¶ 1-69 of the Proposed Amended Complaint.

There was also some issue relative to defendants' failure to supply a photograph of plaintiff's injured hand. It appears from defense counsel's letter of November 4, 2009 (Dkt. #75) and his declaration (Dkt. #76), that the photograph in question is no longer in existence. Therefore, any motion or proceeding relative to its production is moot.

#### CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Marian W. Payson (Dkt. #74), and I grant, in part, and deny, in part, plaintiff's motion to file an Amended Complaint and adopt the recommendations of Magistrate Judge Payson as to those matters in ¶ 7 of her Report and Recommendation.

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
December 9, 2009.