

CV-06-0045-MWL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MATTHEW SILVA and DANIEL
WARNER,

Plaintiffs,

vs.

HAROLD CLARKE, MAGGIE
MILLER-STOUT, CAROL PORTER,
DOUG WADDINGTON, JOHN AND
JANE DOES 1-50,

Defendants.

NO. CV-05-414-MWL

ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING CLASS
CERTIFICATION, AND DIRECTING
COMPLAINT BE SEVERED

BEFORE THE COURT are Objections submitted by Plaintiff Matthew
Silva (Ct. Rec. 6). Mr. Silva claims Plaintiff Daniel Warner gave him
permission to sign and present the documents on Mr. Warner's behalf.
After review of Plaintiff Silva's assertions, and regardless of his
litigation ability, this court will not permit Mr. Silva to represent
a fellow inmate. See *Cato v. United States*, 70 F.3d 1103, 1105 n. 1
(9th Cir. 1995) (non-attorney party may not represent other
plaintiffs); *Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir.
1997) (parent or guardian cannot bring suit on behalf of minor child);
McShane v. United States, 366 F.2d 286, 288 (9th Cir. 1966) (non-
attorney party may not represent other plaintiffs).

ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING CLASS CERTIFICATION,
AND DIRECTING COMPLAINT BE SEVERED -- 1

1 Following review of Plaintiffs' objections and for the reasons
2 set forth by the Magistrate Judge, **IT IS ORDERED** the Report and
3 Recommendation (Ct. Rec. 5) is **ADOPTED in its entirety**. This case
4 will proceed before the Magistrate Judge, subject to objections as
5 provided in the Local Rules for the Eastern District of Washington.

6 For the sake of administrative ease, the court will order that
7 each Plaintiff's claim be severed from the claims of the others.

8 Plaintiff Matthew Silva will proceed in this action, while Plaintiff
9 Daniel Warner will proceed in a separate civil action to be opened by
10 the District Court Executive. Each Plaintiff will proceed with his
11 own action and will be solely responsible for his own action and his
12 own filing fee.

13 The District Court Executive will be directed to assign each new
14 action to the same judicial officer assigned to the instant action.
15 The District Court Executive shall make appropriate adjustment in the
16 assignment of civil cases to compensate for this reassignment.

17 Accordingly, **IT IS ORDERED**:

- 18 1. The claims of Plaintiff Daniel Warner are severed from the
19 claims of Plaintiff Matthew Silva;
- 20 2. Plaintiff Matthew Silva shall proceed as the sole Plaintiff
21 in case No. CV-05-414-MWL; and
- 22 3. The District Court Executive is directed to:
 - 23 a. Open a separate civil action for Plaintiff Daniel
24 Warner, docketing the complaint as received on December
25 19, 2005;
 - 26 b. Assign this action to the judicial officer to whom the
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1 instant case is assigned and make appropriate
2 adjustment in the assignment of civil cases to
3 compensate for such assignment;

- 4 c. Place a copy of this Order, the complaint and the
5 appropriate application to proceed *in forma pauperis* by
6 a prisoner, in the file opened for Daniel Warner;
- 7 d. Strike from the caption of each Plaintiff's complaint
8 all Plaintiffs' names except the name of the individual
9 Plaintiff proceeding in the action;
- 10 e. Send each Plaintiff an endorsed copy of his complaint
11 bearing the amended caption and the case number
12 assigned to his own individual action;
- 13 f. Ensure the filing fee has been paid or that documents
14 for proceeding *in forma pauperis* are in order; and
- 15 g. Forward each file to the assigned judicial officer for
16 further proceedings.

17 **IT IS SO ORDERED.** The District Court Executive shall enter this
18 Order and forward copies to Plaintiffs Matthew Silva and Daniel
19 Warner.

20 **DATED** this 1st day of February, 2006.

21
22 s/ Robert H. Whaley
23 ROBERT H. WHALEY
24 CHIEF UNITED STATES DISTRICT JUDGE
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