



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



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MICHAEL SPINNER, et al.,

Plaintiffs,

REPORT AND
RECOMMENDATION

- against -

01 CV 2715 (CPS)

CITY OF NEW YORK, et al.,

Defendants.

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During the course of a conference held before this Court on March 3, 2004, plaintiffs indicated that Federico Tenorio would consent to dismissal of his "strip search" claims in the above-captioned action. However, plaintiffs' counsel has further indicated that Mr. Tenorio would continue to press those claims that relate to the conditions of his confinement.

Defendants' counsel had previously proposed a Stipulation of Voluntary Dismissal, seeking to dismiss with prejudice all of Mr. Tenorio's claims in the Spinner litigation, including the conditions of confinement claim, based on certain representations made during Mr. Tenorio's deposition in another related action, Cence v. City of New York, No. 03 CV 4114 (S.D.N.Y.).

Having now clarified plaintiffs' position, which is that Mr. Tenorio only agrees to the dismissal of his strip search claims in Spinner, it is respectfully recommended that an order enter:

(1) dismissing, with prejudice, all claims against all defendants named in the action Spinner v. City of New York, 01 CV 2715 (CPS), that relate to Mr. Tenorio's search by NYPD personnel;

(2) permitting Mr. Tenorio to maintain his "conditions" claims in the Spinner action;

(3) precluding either party from calling Mr. Tenorio as a witness during the first phase of the trial dealing with strip search allegations; and

(4) permitting defendants to depose Mr. Tenorio on his conditions claim prior to the commencement of that phase of the trial dealing with claims based on conditions of confinement.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within ten (10) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; *Small v. Secretary of Health and Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to mail copies of this Report and Recommendation to the parties.

SO ORDERED.

Dated: Brooklyn, New York
March / 0 , 2004

Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York