

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
7

8 ZACHARY HARMON,
9 Plaintiff,
10 vs.
11 ROBERT BROWN; et al.,
12 Defendants.

Case No. 18-cv-1030-WQH-JLB

ORDER

13 ANDREW A. CEJAS,
14 Plaintiff,
15 vs.
16 ROBERT BROWN; et al.,
17 Defendants.

Case No. 18-cv-543-WQH-JLB

18 ROBERT MCCULLOCK,
19 Plaintiff,
20 vs.
21 ROBERT BROWN; et al.,
22 Defendants.

Case No. 18-cv-548-WQH-JLB

23 JAMES AUSTIN,
24 Plaintiff,
25 vs.
26 ROBERT BROWN; et al.,
27 Defendants.

Case No. 18-cv-600-WQH-JLB

1 HAYES, Judge:

2 Before the Court are the Motions for Permissive Joinder filed by Plaintiff Andrew
3 A. Cejas (ECF No. 15) in *Cejas v. Brown*, 18-cv-543-WHQ-JLB; Plaintiff Robert
4 McCulloch (ECF No. 17) in *McCulloch v. Brown*, 18-cv-548-WQH-JLB; Plaintiff James
5 Austin (ECF No. 7) in *Austin v. Brown*, 18-cv-600-WQH-JLB; Plaintiff Zachary Harmon
6 (ECF No. 8) in *Harmon v. Brown*, 18-cv-1030-WQH-JLB.

7 **I. Background**

8 In March and May 2018, Plaintiffs, currently incarcerated at Richard J. Donovan
9 Correctional Facility (RJD) and appearing pro se, each filed a complaint alleging RJD has
10 failed to provide weekly Buddhist services in violation of the Free Exercise Clause, the
11 Equal Protection Clause, and the Religious Land Use and Institutionalized Persons Act.
12 On August 14, 2018, Plaintiffs filed identical Motions for Permissive Joinder. On October
13 24, 2018, Defendants Robert Brown, Fabrice Hadjadj, J. Davies, P. Covello, L. Eshelman,
14 and D. Paramo filed Opposition (ECF No. 21) in *Harmon v. Brown*, 18-cv-1030-WQH-
15 JLB. Plaintiffs did not file a reply.

16 **II. Contentions of the Parties**

17 Plaintiffs contend that their claims “arise out of the same series of transactions and/or
18 occurrences” the “same Constitutional [v]iolations” and “arise common questions of law
19 and fact in each case[.]” (ECF No. 8¹ at 1). Plaintiffs assert that joinder² of all Plaintiffs
20 “is based on the principles of fundamental fairness to all parties” and “would provide the
21 Court[] judicial economy, same witnesses, and same document proof of claims.” *Id.*

22 Defendants contend that joinder of the four cases should be denied because “(1) the
23 facts of each Plaintiffs’ claim requires an individualized analysis to determine if his
24

25
26 ¹ All record citations are to *Harmon v. Brown*, 18-cv-1030-WQH-JLB, unless otherwise noted.

27 ² Plaintiffs cite both Federal Rules of Civil Procedure 19 and 20(a). However, Plaintiffs have made no
28 showing that any Plaintiffs are “required parties” pursuant to Rule 19. The Court analyzes Plaintiffs’
claims under Rule 20.

1 practice of Buddhism was burdened and whether he exhausted his administrative remedies;
2 (2) Plaintiffs' status as pro se inmates makes joinder impractical because they could be
3 relocated or paroled during the pendency of the litigation; (3) each matter has a
4 significantly different procedural posture; and (4) the matters have already been deemed
5 related and assigned to the same judge, thereby alleviating any concerns regarding
6 consistency in rulings, and conserving judicial resources." (ECF No. 21 at 2).

7 **III. Legal Standard**

8 Under Federal Rule of Civil Procedure 20(a)(1), persons may join in one action as
9 plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with
10 respect to or arising out of the same transaction, occurrence, or series of transactions or
11 occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the
12 action. Fed. R. Civ. P. 20.

13 Even if the standard for permissive joinder under Rule 20(a) is satisfied, district
14 courts have the discretion to refuse joinder in the interests of avoiding prejudice and delay,
15 ensuring judicial economy, or safeguarding principles of fundamental fairness. *See*
16 *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) ("Even once [Rule 20]
17 requirements are met, a district court must examine whether permissive joinder would
18 'comport with the principles of fundamental fairness' or would result in prejudice to either
19 side."); *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 558 F.2d 914, 917
20 (9th Cir. 1977) ("Rule 20 . . . is to be construed liberally in order to promote trial
21 convenience and to expedite the final determination of disputes . . .").

22 **IV. Ruling of the Court**

23 An action brought by multiple incarcerated plaintiffs proceeding pro se presents
24 procedural and logistical problems that can cause delay and confusion. Plaintiffs in a
25 joined action must not only agree on the content of filings—they must also be able to obtain
26 original signatures from all other plaintiffs on filings as well. Pro se plaintiffs are not
27 permitted to authorize one individual to sign documents for them. Delay can arise from
28 the transfer of inmates to other facilities or institutions, the changes in address that occur

1 when inmates are released on parole, and the difficulties faced by inmates who attempt to
2 communicate with other plaintiffs who have been released. *See, e.g., Lewis v. Nevada*,
3 2014 WL 65799, at *3 (D. Nev. Jan. 7, 2014) (“Following upon plaintiff[‘s] . . . release
4 from physical custody, it will be exceedingly difficult for plaintiffs to efficiently file further
5 multi-plaintiff papers in a joined action. Plaintiffs are not in a position to efficiently and
6 effectively confer with one another, review proposed papers, and then each sign papers for
7 filing within deadlines established in the case.”); *Davis v. United States*, 2007 WL
8 2225791 (E.D. Cal. July 31, 2007) (same).

9 In this case, Plaintiffs are currently housed in facility D at the RJD, where they can
10 “easily collaborate, obtain signatures, and otherwise manage their cases jointly.” (ECF No.
11 21 at 7). However, Plaintiffs would likely face substantial difficulty and delay
12 collaborating on the content of filings and obtaining the requisite signatures in the event
13 one is transferred to another facility or released during the pendency of this litigation.³

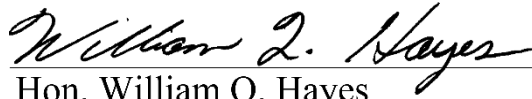
14 In the interests of preserving judicial resources, efficiency, and the prevention of
15 inconsistent rulings, pursuant to Local Rule 40.1, this Court has deemed the cases at issue
16 here “related” and assigned them all to the same District Judge and Magistrate Judge. The
17 Court finds that based on the facts of these cases, joinder of all Plaintiffs into a single action
18 would be more likely to cause confusion and delay than to “expedite the final determination
19
20
21
22
23
24

25
26 ³ The Court grants Defendants’ request for judicial notice of the CDCR inmate locator website for the
27 entry of Zachary Harmon, inmate number AX3071. (ECF No. 21 at 2 n.2). The California Department
28 of Corrections inmate locator states that as of the date of this Order, Plaintiff Harmon is eligible for
parole in August of 2019.

1 of [the] disputes[.]”⁴ See *League to Save Lake Tahoe*, 558 F.2d at 917. Plaintiffs’ Motions
2 for Permissive Joinder are denied.⁵

3 IT IS HEREBY ORDERED that Plaintiffs’ Motions for Permissive Joinder (ECF
4 No. 15) in *Cejas v. Brown*, 18-cv-543-WQH-JLB; (ECF No. 17) in *McCulloch v. Brown*,
5 18-cv-548-WQH-JLB; (ECF No. 7) in *Austin v. Brown*, 18-cv-600-WQH-JLB; (ECF No.
6 8) in *Harmon v. Brown*, 18-cv-1030-WQH-JLB are DENIED.

7 Dated: November 29, 2018

8 
9 Hon. William Q. Hayes
10 United States District Court
11
12
13
14
15
16
17
18

19 ⁴ Contributing to the potential for confusion is the fact that these four cases are not of identical
20 procedural posture. Some cases present unique issues not common to all Plaintiffs. For example, in a
21 Motion to Dismiss filed by Defendants (ECF No. 20) currently pending in *Cejas v. Brown*, 18-cv-543-
22 WQH-JLB, Defendants contend that Plaintiff Cejas brought and settled the same claim in 2015, and thus
his current action is barred under the principle of res judicata.

23 ⁵ Plaintiffs’ Motion requests permissive joinder under Rules 19 and 20(a), however the relief they
24 seek—a single action that includes all Plaintiffs—is also consistent with a motion for consolidation
25 under Federal Rule of Civil Procedure 42(a)(2). The Court notes that under a Rule 42(a) analysis “[t]he
26 district court has broad discretion under this rule to consolidate cases pending in the same district”
27 *Investors Research Co. v. United States District Court for the Central District of California*, 877 F.2d
28 777 (9th Cir.1989), and “[i]n determining whether to consolidate actions, the Court weighs the interest
of judicial convenience against the potential for delay, confusion, and prejudice caused by
consolidation.” *Southwest Marine, Inc., v. Triple A. Mach. Shop, Inc.*, 720 F. Supp. 805, 807 (N.D. Cal.
1989). Even liberally construing Plaintiffs’ Motion as a motion for consolidation under Rule 42(a), the
Court finds that the potential for confusion and delay outweighs any convenience that would be
achieved through consolidation.