

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JAMES ALEXANDER #136531,

Plaintiff,

Case No. 05-73073

v.

District Judge Gerald E. Rosen  
Magistrate Judge R. Steven Whalen

ANDREW JACKSON, et al.,

Defendants.

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**ORDER GRANTING DEFENDANTS' MOTION TO CONSOLIDATE**

Defendants in this civil right action brought under 42 U.S.C. §1983 have moved to consolidate this case with *Alexander v. Powell*, Docket No. 06-13537, pursuant to Fed.R.Civ.P. 42(a) [Doc. #39].

Rule 42(a) states:

**“(a) Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

The present case and *Alexander v. Powell*, Docket #06-13537, are, in fact, one in the same, involving the same claims against two of the same Defendants. On July 14, 2006, the present case was dismissed without prejudice based on the “total exhaustion rule” that the Supreme Court subsequently rejected in *Jones v. Bock*, --- U.S. ----, 127

S.Ct. 910, 166 L.Ed.2d 798 (2007). Given that dismissal, the Plaintiff re-filed his case on August 8, 2006, under Docket No. 06-13537 (*Alexander v. Powell*), naming only those two Defendants who had been exhausted (Clarence Powell and Cynthia Gause). The third Defendant in the present case—Warden Andrew Jackson—was not named in the 2006 case. On March 15, 2007, in view of *Jones v. Bock*, the Court granted Plaintiff’s motion for reconsideration and re-opened the present case [Doc. #31].

In addition to requesting consolidation of the two cases, Defendants ask, pursuant to Fed.R.Civ.P. 10(c), that they be permitted to adopt by reference the motion for summary judgment and reply brief they filed in the 2006 case.

Plaintiff states in response to the present motion that he has no objection to consolidation per se, but objects to consolidating any rulings on the summary judgment motion in the 2006 case with motions in this case.

In view of the foregoing, the motion to consolidate [Docket #39] is GRANTED, and the present case will be consolidated with Docket No. 06-13537.

In Docket No. 06-13537, the undersigned filed a Report and Recommendation (R&R) on January 22, 2008, recommending that summary judgment be granted to Defendants Powell and Gause. In making that recommendation, the Court had the benefit of the briefs, affidavits and other materials submitted by both parties. The claims against Powell and Gause are identical in both cases. Therefore, in order to “avoid unnecessary costs and delay,” Fed.R.Civ.P. 42(a), the following docket items from case no. 06-13537 are adopted into, and shall be considered and determined, in case no. 05-73037, with

regard to Defendants Powell and Gause only:

Doc. #10 Motion for Summary Judgment  
Doc. #11 Response to Motion for Summary Judgment  
Doc. #12 Appendix to Response to Motion for Summary Judgment  
Doc. #15 Defendants' Reply to Response to Motion for Summary Judgment  
Doc. #17 Plaintiff's Reply to Defendants' Response to Plaintiff's Reply Brief  
Doc. #26 Report and Recommendation re: Doc. #10

The R&R filed in 06-13537 does not address Defendant Jackson. Although the analysis in the R&R would suggest that Warden Jackson has no §1983 liability, it is only fair to give the parties the opportunity to explicitly address that question. Therefore, the parties are directed to brief the issue of whether Defendant Jackson should be dismissed or granted summary judgment, in case no. 05-73037, in accordance with the following schedule:

Defendant Jackson's Motion to Dismiss and/or for Summary Judgment:	<b>FEBRUARY 18, 2008</b>
Plaintiff's Response:	<b>MARCH 3, 2008</b>
Defendant's Reply:	<b>MARCH 10, 2008</b>

SO ORDERED.

S/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: February 4, 2008

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys

and/or parties of record by electronic means or U.S. Mail on February 4, 2008.

S/G. Wilson  
Judicial Assistant