UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RICKY LYNCH, et al.,

ORDER

Plaintiffs, 11-CV-2602(JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.

----------x

HASHEEN McLAURIN,

Plaintiff, 11-CV-3711(JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.

----------x

ANDREW WILLIAMS,

Plaintiff, 11-CV-3712(JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.

----------x

WESLEY JONES,

Plaintiff, 11-CV-3713(JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.

----------x

SHATI ROY,

Plaintiff, 11-CV-3714(JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

----------x

----------x
QUINTELLE HARDY,

Plaintiff, 11-CV-3716 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
MARK PHIPPS,

Plaintiff, 11-CV-3717 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
DASHAUN SIMS,

Plaintiff, 11-CV-3718 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
WALTER ANDERSON,

Plaintiff, 11-CV-3822 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
JULIUS A. STEPHENS, et al.,

Plaintiffs, 11-CV-4225 (JS)(GRB)

-against-

SUFFOLK COUNTY CORRECTIONAL
CENTER, et al.,

Defendants.
----------x

----------x
KENNETH JOSEPH WILLIAMS,

Plaintiff, 11-CV-4428 (JS)(GRB)

-against-

SUFFOLK COUNTY CORRECTIONAL CENTER, et al.,

Defendants.
----------x
DANIEL C. WILLIAMS,

Plaintiff, 11-CV-4483 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
JAMES PERNELL,

Plaintiff, 11-CV-4562 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
PHILLIP LEVAR HOLLMAN, et al.,

Plaintiffs, 11-CV-4705 (JS)(GRB)

-against-

SUFFOLK COUNTY CORRECTIONAL CENTER, et al.,

Defendants.
----------x
VERNON ODOM,

Plaintiff, 11-CV-4940 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x

----------x
JAMES McGILL, et al.,

Plaintiffs, 11-CV-4946 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
JAMIE MATTHEWS,

Plaintiff, 11-CV-5060 (JS)(GRB)

-against-

SUFFOLK COUNTY CORRECTIONAL
CENTER, et al.,

Defendants.
----------x
CLYDE LOFTON,

Plaintiff, 11-CV-5145 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
FRANK CAIRO, et al.,

Plaintiffs, 11-CV-5176 (JS)(GRB)

-against-

VINCENT F. DeMARCO,
Defendant.
----------x
MARVIN CANALES, et al.,

Plaintiffs, 11-CV-5177 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x

----------x
DWAYNE DARNELL STEWART,

Plaintiff, 11-CV-5236 (JS)(GRB)

-against-

SUFFOLK COUNTY CORRECTIONAL CENTER, et al.,

Defendants.
----------x
RONALD GRANT,

Plaintiff, 11-CV-5460 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
MANUEL S. ROSALES,

Plaintiff, 11-CV-5461 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
ELIHUE C. CRUMP,

Plaintiff, 11-CV-5566 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
DENNIS CLYDE THOMASON,

Plaintiff, 11-CV-5569 (JS)(GRB)

-against-

SUFFOLK COUNTY CORRECTIONAL CENTER,

Defendant.
----------x

----------x
JOHN MAZZULLO,

Plaintiff, 11-CV-5576 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
GERARD HATCH,

Plaintiff, 11-CV-5581 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
JARRELL WALKER,

Plaintiff, 11-CV-5594 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
MARK A. HARRIS,

Plaintiff, 11-CV-5595 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
NEHEMIAH BELLAMY,

Plaintiff, 11-CV-5597 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x

----------x
HAROLD OWENS, JR.,

Plaintiff, 11-CV-5598 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
EDWARD L. EVANS,

Plaintiff, 11-CV-5666 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
JOSEPH HASSLER,

Plaintiff, 11-CV-5807 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
CHRISTOPHER CATALANO,

Plaintiff, 11-CV-5808 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
HAROLD JONES,

Plaintiff, 11-CV-5947 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x

----------x
JAMES T. JOHNSEN,

Plaintiff, 11-CV-5979 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
PAUL THOMAS ALVER,

Plaintiff, 11-CV-6065 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
RICHARD JONES,

Plaintiff, 11-CV-6067 (JS)(GRB)

-against-

YAPHANK CORRECTIONAL FACILITY,
et al.,

Defendants.
----------x
FREDERICK GRACE,

Plaintiff, 11-CV-6068 (JS)(GRB)

-against-

VINCENT F. DeMARCO,
Defendant.
----------x
MATTHAN DAULEY,

Plaintiff, 11-CV-6078 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x

----------x
ROBERT STEWART, JR.,

Plaintiff, 11-CV-6116 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
MICHAEL NIEVES,

Plaintiff, 11-CV-6117 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
NOE MARTINEZ,

Plaintiff, 11-CV-6119 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
TOBIAS BROWN,

Plaintiff, 11-CV-6121 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
ROBERT SAVOIA,

Plaintiff, 11-CV-6122 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x

----------x
EDWARD FRIEND,

Plaintiff, 11-CV-6124 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
DAVID RYAN CALLENDER,

Plaintiff, 11-CV-6125 (JS)(GRB)

-against-

VINCENT F. DeMARCO,
Defendant.
----------x
DARYL COHEN,

Plaintiff, 11-CV-6198 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
PAUL D. CHAMPLIN,

Plaintiff, 11-CV-6199 (JS)(GRB)

-against-

VINCENT F. DeMARCO, et al.,

Defendants.
----------x
LUIS F. GOMEZ,

Plaintiff, 11-CV-6281 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x

----------x
RAMON RUIZ,

Plaintiff, 11-CV-6282 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
LUIS ZHICAY,

Plaintiff, 11-CV-6283 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
LAZARO BAUTISTA,

Plaintiff, 11-CV-6285 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
EFRAIN DELCID,

Plaintiff, 11-CV-6287 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
CECILIO FERNANDEZ,

Plaintiff, 11-CV-6288 (JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x

----------x
ANTHONY JEROME WADE,

Plaintiff, 11-CV-6389 (JS)(GRB)

-against-

VINCENT F. DeMARCO,
Defendant.
----------x
CHARLES RAYMOND McCLENDON,

Plaintiff, 12-CV-0166(JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
JOHN MARTIN,

Plaintiff, 12-CV-0254(JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
MARSHALL BLIZZARD,

Plaintiff, 12-CV-0256(JS)(GRB)

-against-

VINCENT F. DeMARCO,

Defendant.
----------x
APPEARANCES
For Plaintiffs: Daniel Hector Rees LaGuardia, Esq.
Edward Garth Timlin, Esq.
Melissa Jane Godwin, Esq.
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022

For Defendants: Arlene S. Zwilling, Esq.
Office of the Suffolk County Attorney
H. Lee Dennison Building, Fifth Floor
100 Veterans Memorial Highway

P.O. Box 6100
Hauppauge, NY 11788

SEYBERT, District Judge:

Pending before the Court are Defendants' letter motions to consolidate Lynch v. DeMarco, 11-CV-2602 with the following cases: McLaurin v. DeMarco, 11-CV-3711, Williams v. DeMarco, 11-3712, Jones v. DeMarco, 11-CV-3713, Roy v. DeMarco, 11-CV-3714, Hardy v. DeMarco, 11-CV-3716, Phipps v. DeMarco, 11-CV-3717, and Sims v. DeMarco, 11-CV-3718. (Case No. 11-CV-2602, Docket Entry 234; Case No. 11-CV-3713, Docket Entry 11; Case No. 11-CV-3717, Docket Entry 12.) For the following reasons, Defendants' motions to consolidate are GRANTED, and the Court hereby ORDERS that all of the above-captioned cases be consolidated.

DISCUSSION

Federal Rule of Civil Procedure 42(a) provides that "[i]f actions before the court involve a common question of law or fact, the court may . . . (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." FED. R. CIV. P. 42(a). In deciding whether to consolidate cases, trial courts are vested with "broad discretion," Johnson v. Celotex Corp., 899 F.2d 1281, 1284 (2d Cir. 1990), and may consolidate actions under Rule 42(a) sua sponte, Devlin v. Transp. Commc'n Int'l Union, 175 F.3d 121, 130 (2d Cir. 1999). Rule 42 should be prudently employed "to expedite trial and eliminate unnecessary repetition and confusion." Devlin, 175 F.3d at 130. In exercising its discretion, the trial court must weigh the efficiency gains against the risk of prejudice to the parties and possible confusion of the issues. Johnson, 899

F.2d at 1285.

In each of the Complaints in the fifty-nine (59) above-captioned actions,[1] the Plaintiffs allege, inter alia: (i) the existence of unhealthy, unsanitary, and hazardous conditions at the Suffolk County Correctional Facility ("SCCF"), including the presence of black mold, fungus, soap scum, and rust in the shower areas of the SCCF, drainage problems causing back-ups of sewage and rusty water, and ventilation problems; (ii) injuries resulting from these conditions including headaches, breathing problems, skin rashes, itching, swelling, and infections; and (iii) that their grievances and/or complaints about these conditions were ignored.

Given that (i) each of the fifty-nine Complaints asserts similar unsanitary and hazardous conditions at SCCF, (ii) with the exception of the Plaintiffs in 11-CV-2602, all Plaintiffs are proceeding pro se, and (iii) most, if not all, Plaintiffs are currently incarcerated, the Court finds that consolidation of the fifty-nine pending actions would be in the interests of judicial economy and efficiency and would minimize the expense and burden on all of the parties, who would otherwise be required to prosecute and defend each lawsuit individually. These benefits far outweigh the minimal, if any, risk of prejudice or confusion to the parties.

[1] The Court notes that the following cases were previously consolidated with Anderson v. DeMarco, 11-CV-3822, by Judge Sandra J. Feuerstein and administratively closed: Abt v. DeMarco, 11-CV-4195; Burwell v. DeMarco, 11-CV-4564; Porter v. DeMarco, 11-CV-4565; Defreitas v. DeMarco, 11-CV-4704; and Williams v. DeMarco, 11-CV-4841.

CONCLUSION

For the foregoing reasons, Defendants' motions to consolidate are GRANTED, and it is hereby:

ORDERED that the fifty-nine (59) above-captioned actions be consolidated for all purposes, to proceed under the lead case, 11-CV-2602 (hereinafter, the "Consolidated Action"). Accordingly, the Clerk of the Court is directed to (i) consolidate these actions, and (ii) mark all of the member cases (i.e., all of the cases consolidated under 11-CV-2602) closed. All future filings are to be docketed in the lead case, 11-CV-2602. It is further

ORDERED that Shearman & Sterling LLP's appointment as pro bono counsel to the Plaintiffs in 11-CV-2602 is extended to all Plaintiffs in the Consolidated Action ("Consolidated Plaintiffs")[2]; and it is further

ORDERED that Shearman & Sterling LLP file a Consolidated Amended Complaint on behalf of the Consolidated Plaintiffs by March 5, 2012. Once filed, the Consolidated Amended Complaint will supercede each of the individual complaints, rendering them of no legal effect, see Arce v. Walker, 139 F.3d 329, 332 n.4 (2d Cir. 1998), and will be the operative complaint upon which the

[2] Counsel's mailing address is:

Lynch v. DeMarco Case Team
c/o Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022

Counsel's telephone number is: (212) 848-8023.

Consolidated Action will proceed.[3] It is further

ORDERED that when a pro se action which relates to the subject matter of the Consolidated Action is hereafter filed in this Court, the Clerk of the Court shall:

1. Assign each subsequently filed action a new case number ("Newly-Filed Action") to proceed before the undersigned and Magistrate Judge Gary R. Brown;[4]

2. Docket this Order in each Newly-Filed Action;

3. Consolidate each Newly-Filed Action with the Consolidated Action and make an appropriate entry on the Consolidated Action's docket so indicating;

4. Mail a copy of the Complaint in each Newly-Filed Action to counsel for the Consolidated Plaintiffs at Lynch v. DeMarco Case Team, c/o Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022;

5. Mail a copy of this Order (and, for any Newly-Filed Action commenced after the Consolidated Amended Complaint is filed, a copy of the Consolidated Amended Complaint) to the Plaintiff in the Newly-Filed Action;

6. Administratively close each Newly-Filed Action.

It is further

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[3] The Court notes that many of the above-captioned cases have pending in forma pauperis applications. Upon receipt of the Consolidated Amended Complaint, the Clerk of the Court is directed to terminate all such motions.

[4] The Court notes that these matters are deemed "related" only to the extent that they relate to the subject matter of the Consolidated Action. Any future civil action commenced pro se by any of the Consolidated Plaintiffs shall not be deemed "related" to the Consolidated Action or any of the Newly-Filed Actions pursuant to Local Civil Rule 50.3.1(e)(2) and thus automatically assigned to the undersigned. Rather, any future actions commenced pro se by any of the Consolidated Plaintiffs shall be randomly assigned or, if one of the Consolidated Plaintiffs has previously filed a pro se complaint unrelated to the Consolidated Action, his action shall be automatically assigned to the district judge who presided over the earlier-filed action.

ORDERED that any claims raised in a Newly-Filed Action that are not raised in the Consolidated Amended Complaint shall be severed.[5] This only applies to Newly-Filed Actions that are commenced after the Consolidated Amended Complaint is filed. Any Plaintiff with severed claims may proceed with those severed claims after the resolution of the Consolidated Action by moving to have their Newly-Filed Actions reopened within thirty (30) days of the entry of judgment in the Consolidated Action. It is further

ORDERED that any pending applications for in forma pauperis status and for the appointment of counsel filed in Newly-Filed Actions commenced after the filing of the Consolidated Amended Complaint shall be denied without prejudice as moot with leave to renew if and when the cases are reopened. The Clerk of the Court is directed to terminate such motions as moot when the Newly-Filed cases are administratively closed. It is further

ORDERED that any Plaintiff--in any of the above-captioned actions or in a Newly-Filed Action--who does not wish to proceed as part of the Consolidated Action must so indicate in a letter to the Court within thirty (30) days of receiving a copy of this Order. Upon receipt of such a letter, the Court will direct the Clerk of

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[5] This only applies to Newly-Filed Actions that are commenced after the filing of the Consolidated Amended Complaint. As the Court previously explained, the Consolidated Amended Complaint will supercede each of the individual complaints in the Consolidated Action, whether they were filed before or after the date of this Order. See Arce v. Walker, 139 F.3d 329, 332 n.4 (2d Cir. 1998). **Thus, any claims asserted in individual complaints filed before the Consolidated Amended Complaint that are not incorporated into the Consolidated Amended Complaint will be deemed voluntarily withdrawn.**

the Court to sever that Plaintiff's Complaint from the Consolidated Amended Complaint and reopen and reinstate his individual action. It is further

ORDERED that counsel for Plaintiffs mail a copy of this Order to each of the Consolidated Plaintiffs.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: January 23, 2012
Central Islip, NY