

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



-PS-O-

LUIS ROSALES, 91A3067,

Plaintiff,

-v-

DECISION AND ORDER
10-CV-6237L(Fe)
10-CV-6044L(Fe)

P. GRIFFIN, M. SHEAHAM, A. BARTLETT
and W. HOPKINS,

Defendants.

Plaintiff has requested permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) and has met the statutory requirements in the case filed as 10-CV-6237L(Fe). Accordingly, the plaintiff's request to proceed in this Court as a poor person is hereby granted. In addition, plaintiff has made a motion for a Temporary Restraining Order. The plaintiff's complaint has been screened by the Court with respect to the 28 U.S.C. § 1915(e)(2) and 1915A criteria.

This case concerns alleged retaliation for plaintiff having obtained an injunction against Southport staff concerning his medical care by, among other things, his legal and other mail privileges being limited in a manner different from other inmates, and in an effort to keep him from communicating with the Court and his family about his litigation. Plaintiff has another case in this Court, case number 10-CV-6044L(Fe), which also concerns issues related to alleged retaliation for filing complaints regarding his medical care at Southport Correctional Facility.

When actions involve common questions of law or fact, such as these two actions by plaintiff, the Court may consolidate the actions and make any such orders regarding them "as may tend to avoid unnecessary costs or delay." Fed.R.Civ.P. 42(a). "A district court can consolidate

related cases under Federal Rule of Civil Procedure 42(a) sua sponte.” *Devlin v. Transp. Commc'ns Int'l.* 175 F.3d 121, 130 (2d Cir.1999). Consolidation should be prudently employed as a valuable and important tool of judicial administration, invoked to expedite trial and eliminate unnecessary repetition and confusion. *Devlin*, 175 F.3d at 130. Accordingly, plaintiff’s two actions shall be consolidated into a single action under the case number 10-CV-6044L(Fe), and the complaint in case number 10-CV-6237L(Fe) shall be deemed a Supplemental Complaint in 10-CV-6044L(Fe).

The Court has decided to appoint counsel in 10-CV-6044L(Fe). The motion for a Temporary Restraining Order in 10-CV-6044L(Fe) has not yet been decided. Therefore, the decision on the Motion for a Temporary Restraining Order filed with this action (10-CV-6237L(Fe)) will be decided with the previous motion (10-CV-6044L(Fe), Docket # 3) .

ORDER

IT HEREBY IS ORDERED, that plaintiff’s request to proceed *in forma pauperis* is granted;

FURTHER, that case numbers 10-CV-6044L(Fe) and 10-CV-6237L(Fe) are consolidated as case number 10-CV-6044L(Fe);

FURTHER, that all papers filed in case number 10-CV-6237L(Fe) shall be papers in case number 10-CV-6044L(Fe), and, henceforth, all papers shall be filed in case number 10-CV-6044L(Fe);

FURTHER, that the complaint submitted in 10-CV-6234L(Fe) is deemed a Supplemental Complaint in case number 10-CV-6044L(Fe);

FURTHER, that the Clerk of the Court is directed to send a copy of the complaint in 10-CV-6237L(Fe) to defendants’ attorney of record in 10-CV-6044L(Fe), Assistant Attorney General Richard Benitez, together with a copy of this order; and


FURTHER, that Motion for a Temporary Restraining Order filed with this action (10-CV-6237L(Fe)) will be decided with the previous motion (10-CV-6044L(Fe), Docket # 3); and

FURTHER, that the Clerk of the Court is directed to close case number 10-CV-6237L(Fe); and

FURTHER, that the Clerk of the Court is directed to cause the United States Marshal to serve copies of the Summons, Supplemental Complaint, and this Order regarding the plaintiff's claims of additional retaliation upon defendants Griffin, Sheaham, Bartlett and Hopkins, without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor; and

FURTHER, that, pursuant to 42 U.S.C. § 1997e(g), the defendants are directed to answer the Supplemental Complaint.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

DATED: May 12, 2010
Rochester, New York