

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMIE ELLIOTT, :
 :
 Plaintiff : Civil Action 2:08-cv-1144
 :
 v. : Judge Marbley
 :
 GARY SIMS, *et al.* : Magistrate Judge Abel
 :
 Defendants. :

ORDER

This matter is before the Court pursuant to Defendants' Objections to Portions of Order of Magistrate Judge (Doc. 49). On May 13, 2009, the Magistrate Judge issued an order denying Defendants' motion to deny certain parties status as plaintiffs, denying Plaintiffs' motion to strike that motion, denying Plaintiffs' motion to deprive Defendants of federal funding, granting Defendants' motion for leave to file an answer out of rule, granting Plaintiffs' motion to compel, granting Defendants' motion for leave to depose the Plaintiffs, and granting Defendants' motion to stay consideration of Plaintiffs' motion for summary judgment. On May 26, 2009, Defendants filed objections to the order, objecting to the extent that the Magistrate Judge's order denied their motion to deny certain parties status as plaintiffs and granted Plaintiff's motion to compel. The Court will now review the Order pursuant to Fed. R. Civ. Pro. 72(a), to consider timely objections and modify

or set aside any portion of the order that is clearly erroneous or is contrary to the law.

Motions for Leave to Join

Plaintiff Jamie Elliott filed this action on December 3, 2008 as sole plaintiff (Doc. 1). On January 26, 2009, Justin Watson filed a motion for leave to join this action as a plaintiff; this the Magistrate Judge granted on January 29, 2009 (Doc. 16). On January 30, 2009, Eric Branham filed a motion for leave to join this action as a plaintiff; this the Magistrate Judge granted on February 4, 2009 (Doc. 18). On March 16, 2009, Defendant filed a Motion to Deny Justin Watson and Eric Branham Status as Plaintiffs in the Instant Case (Doc. 34).¹ This the Magistrate Judge denied in his order of May 13, 2009, finding that the motion was untimely in that it amounted to belated objections to the joinder orders of January 29 and February 4.

Defendants now object to this order, and again ask that Plaintiffs Watson and Branham be severed from this action and that they proceed separately. They argue that permitting inmates in separate prisons to jointly maintain an action such as this “creates logistical problems in the signing and filing of motions and affidavits”. Moreover, as this action is maintained pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA) by prisoners claiming that they have been denied the free exercise of their religion, Defendants argue that

¹ On the same date, Defendants filed a motion for leave to file their answer *instanter*. (Doc. 31.)

individualized inquiries concerning the various plaintiffs' religious beliefs will be required. Defendants cite several cases in which courts have found joint prisoner litigation impractical for logistical or prison administrative reasons.

The Court finds Defendants' reasoning unpersuasive. Each Plaintiff here is a prisoner incarcerated in the prisons of Ohio who claims that his Sabbatarian religious beliefs require him to observe a weekly work proscription on Sunday, and that he has been wrongfully denied such a work proscription by Defendants. *See* Doc. 3 at 2; Doc. 15 at 2-3; Doc. 17 at 3. Unlike actions involving, *e.g.*, excessive use of force or denial of medical care, this is not a case in which individual plaintiffs would present greatly varying factual backgrounds. Each Plaintiff is bringing essentially identical claims, under the same statutes and constitutional provisions. To the extent that Defendants must obtain evidence concerning whether each Plaintiff's religious beliefs are sincerely held, it is no more efficient to do that one time in three lawsuits than it is to do it three times in one lawsuit. Defendants raise various defenses to Plaintiffs' allegations, including failure to state a claim, qualified immunity, failure to exhaust administrative remedies, Eleventh Amendment immunity, and the elapse of the statute of limitations (Doc. 31 at 6-8). Most of these defenses are common as against all three Plaintiffs; it is not clear that the others would require extensive and separate discovery. In addition, the essential issue at bar appears at this point to be whether the actions and policies of Defendants comported with the requirements of RLUIPA. Common sense indicates that the legal and constitutional validity of Defendants' policies need not, and

indeed should not, be adjudicated three separate times. The Order of the Magistrate Judge is **SUSTAINED** with respect to Defendants' motion to deny plaintiff standing.

Motion to Compel

On February 6, 2009, Plaintiff Jamie Elliott filed a motion to compel discovery (Doc. 19). He claimed that, on December 8, 2008, he served upon Defendant Gary Sims a set of requests for production of documents and requests for admissions. He further claimed that, on January 20, 2009, he served a letter upon Defendants' counsel, stating that he had received no discovery and that, unless Defendants responded by February 4, 2009, he would move to compel.

Defendant Gary Sims did not respond to the motion to compel. Considerable motions practice on other matters followed. Finally, in his order of May 13, 2009, the Magistrate Judge granted the unopposed motion to compel. He ordered Defendant Gary Sims to respond to Plaintiff's request for production of documents, and held that, as there had been no answer to the requests for admission, they were admitted pursuant to Fed. R. Civ. Pro. 36.

Defendants now object to this order.² They deny ever receiving Plaintiff's discovery requests or subsequent correspondence, and provide an affidavit from a legal secretary attesting to their counsel's correspondence tracking procedures.

However, they state that:

² Defendants' request to withdraw Defendant Gary Sims' admissions has been addressed by the Court elsewhere.

“Defendants are willing to provide most of the discovery sought, but are wary of providing documentation concerning other named inmates besides Plaintiffs, since the same may tend to jeopardize the privacy, safety and security of those inmates. Defendants also have institutional security objections concerning access to the ODRC Chaplains’ Handbook. Defendants do not object to providing Plaintiffs access to the remainder of the documents sought for inspection and copying at their own expense, and are prepared to provide this material within a week after the Court rules on these Objections.”

(Doc. 49 at 9.)

Defendants now having responded to Plaintiff’s Motion to Compel, the Court is satisfied with their proposed solution. It is therefore **ORDERED** that Defendant Gary Sims shall respond to the requests for production of documents attached to Plaintiff’s motion to compel (Doc. 19-2) within seven days of the date of this Order. Defendant may raise objections to Plaintiff’s requests for production of documents as generally provided for in the Federal Rules of Civil Procedure. Defendant shall file his responses with the Court, though he need not file the responsive documents themselves. Plaintiffs may, at a later date, file a motion to compel pursuant to (and complying with the requirements of) Fed. R. Civ. Pro. 37(a), if they wish to argue that Defendants’ discovery production has been insufficient or that Defendants have raised objections to discovery which are not legally justifiable.

s/Algenon L. Marbley
United States District Judge