

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

James E. Damron, <i>et al.</i> ,	:	
Plaintiffs,	:	Civil Action 2:09-cv-50
v.	:	Judge Marbley
Gary Sims,	:	Magistrate Judge Abel
Defendant	:	

ORDER

Roger Green (“Green”) was one of the original plaintiffs who signed the January 20, 2009 complaint in this action. (Doc. 1-2 at 6.) Defendant later moved for judgment on the pleadings with respect to six defendants, including Green, arguing that they had failed to exhaust their administrative remedies before filing suit.¹ In his report and recommendation on this motion, the Magistrate Judge found that Green’s bare declaration under penalty of perjury in the complaint that he had appealed a denial of accommodation to Defendant was insufficient evidence to raise a genuine issue of material fact as to whether Green had, in fact, exhausted his administrative remedies, and ordered Green to file a new declaration providing copies of the prison chaplain’s decision and the appeal of that decision. Green

¹ The Court interpreted this motion for judgment on the pleadings as a motion for summary judgment with respect to the affirmative defense of failure to exhaust administrative remedies. *See* Doc. 95 at 5.

subsequently filed a declaration under penalty of perjury stating that attached exhibits proved that he had exhausted administrative remedies before filing suit. However, no documents were attached to his declaration. *See* Doc. 239 at 2. On August 3, 2010, the Court granted Defendant's motion for judgment on the pleadings, dismissing Green without prejudice for failure to provide evidence of exhaustion. Green, however, subsequently continued to sign briefs filed in this case. *See, e.g.*, Doc. 269 at 12.

On December 6, 2010, Green filed a motion for leave to join this action as a plaintiff. Referring to documents he had previously filed accompanied by a different declaration under penalty of perjury (Doc. 260 at 3-10), Green indicated that he filed his request for religious accommodation on April 11, 2008, that the prison chaplain acknowledged that the request was still pending on May 25, 2008, that the chaplain and warden disapproved of the request on September 14, 2008, and that Green appealed to Defendant on a subsequent date on or around October 1, 2008, with no response. The documents cited appear, on their face, to support Green's assertions and to be copies of the cited records.

The Court finds that, under the circumstances, it is just to permit Roger Green to rejoin this action as a plaintiff. He has belatedly complied with the Court's order to provide the documents which he asserts support his claim to have exhausted his administrative remedies prior to filing suit and prior to the date of inception of this case. No prejudice would appear to accrue to Defendant by permitting Green's resumption of his status as a plaintiff, and Defendant has

neither made any objection to Green's attempt to rejoin this case nor offered any refutation of the materials he presents.

The motion of Roger Green to join this action as a plaintiff (Doc. 284) is accordingly **GRANTED**.

s/Mark R. Abel
United States Magistrate Judge