

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES J. KAUFMAN,

Plaintiff,

ORDER

v.

06-C-205-C

THOMAS E. KARLEN, RANDALL R. HEPP,
CYNTHIA L. O'DONNELL, RICHARD
RAEMISCH, DANIELLE LACOST, MATTHEW
FRANK, PERRY NICHOLS, APRIL OLIVERSON,
K. BAUER, MICHELLE MCCAUGHTRY, JEFFREY
SCHEFELKER, TRAVIS BERRY, JUDY IMBERG
and OFFICER M. NELSON,

Defendants.

In this civil action for declaratory, monetary and injunctive relief, plaintiff James Kaufman is proceeding on claims that defendants, all of whom are employees of the Wisconsin Department of Corrections, violated his rights under the First Amendment by opening his legal mail, confiscating various publications, denying him permission to wear a religious emblem and obtain access to religious books on an equal basis with Christian inmates and issuing him a retaliatory disciplinary report. He alleges that defendants violated his Eighth Amendment rights by refusing to provide him with adequate quantities of soap.

Now before the court are plaintiff's "Motion for Oral Argument" and "Motion for Reconsideration of the February 16, 2007 Court Order and Objection to Discovery Provided by Defendants on February 16, 2007." (I construe the latter motion as a motion for reconsideration and a motion to compel.) Oral argument is not necessary or appropriate in this case; therefore plaintiff's motion for oral argument will be denied. Plaintiff's fourth request for reconsideration of the decision to deny him access to the names and addresses of numerous "potential witnesses" will be denied for the reasons stated in this court's orders dated Jan. 22, 2007, dkt. #56, at 2; Jan. 31, 2007, dkt. #59, at 2-3; Feb. 7, 2007, dkt. #86, at 1; and Feb. 16, 2007, dkt. #91, at 2.

However, insofar as plaintiff objects to the list of books defendants have produced in response to the magistrate judge's court order, plaintiff's motion to compel will be granted. By April 3, 2007, defendants must produce a list of the books contained in the Jackson Correctional Institution's library, as they agreed to do previously. A decision on plaintiff's and defendants' pending motions for summary judgment will be stayed to permit plaintiff the opportunity to use the untimely-produced discovery to file a supplemental brief in support of his motion for summary judgment.

Early in the discovery process, plaintiff requested a list of the books contained in the Jackson Correctional Institution's library. He sought the information for two purposes: to

show that the prison library contained books that were equivalent in content to books he had been denied and to show how few atheist books there were compared to books about other religions. The state has objected to the request, but its reasons for doing so have changed throughout the course of the litigation. Initially, defendants contended that the request was burdensome, oppressive and harassing because there were 18,040 books in the institution's libraries and the automation software that records their titles is out of date. Defendants suggested that plaintiff could obtain the titles of all the books himself from a central database, a suggestion the court accepted as viable. See Order dated Dec. 12, 2007, dkt. #38, at 3. However, shortly after that order was issued, plaintiff was transferred to the Wisconsin Secure Program Facility, where he was unable to obtain access to the database. In response to this problem, defendants' lawyer offered to have the Jackson Correctional Institution librarian run a database search on plaintiff's behalf to obtain the needed information. See Order dated Jan. 23, 2007, dkt. #57, at 5.

Now, plaintiff alleges that the list of books provided to him by defendants' lawyer contains a list of books found in all Wisconsin libraries (including university libraries), and not a list confined to the Jackson Correctional Institution. Because plaintiff needs to know what books are in the Jackson Correctional Institution only, the list is virtually worthless to him.

Defendants represented to the court previously that it was possible to use the

electronic database to search for books contained in the Jackson Correctional Institution. When it became clear that plaintiff could not obtain access to the database himself, defendants offered to do it for him. Nevertheless, they have failed to provide him with the discovery to which he is entitled. Consequently, I will grant plaintiff's motion to compel. Defendants may have until April 3, 2007, in which to provide plaintiff with a list of the books available in the Jackson Correctional Institution Library. Plaintiff may have until April 17, 2007 in which to file a supplement to his motion for summary judgment incorporating the discovery produced to him by defendants. Defendants may have until April 27, 2007, in which to file a reply. In the meanwhile, a decision on the pending cross motions for summary judgment will be stayed.

ORDER

IT IS ORDERED that plaintiff James Kaufman's

1. "Motion for Oral Argument" is DENIED; and
2. "Motion for Reconsideration of the February 16, 2007 Court Order and Objection to Discovery Provided by Defendants on February 16, 2007" is GRANTED in part and DENIED in part. By April 3, 2007, defendants must provide plaintiff with a list of the books available in the Jackson Correctional Institution Library. Failure to do so may result in sanctions.

3. Plaintiff's and defendants' pending motions for summary judgment are STAYED. Plaintiff may have until April 17, 2007 in which to file a supplement to his motion for summary judgment incorporating the discovery produced to him by defendants. Defendants may have until April 27, 2007, in which to file a reply.

Entered this 28th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge