

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

JERRY CHARLES,

Plaintiff,

v.

DICK VERHAGEN and JON LITSCHER,

Defendants.

ORDER

01-C-253-C

In an order entered on September 20, 2002, I denied plaintiff's motion to amend the court's August 28, 2002 order in this case. The August 28 order enjoined defendants from preventing plaintiff from possessing "a reasonable quantity" of prayer oil in his cell. In the September 20 order, I denied plaintiff's request that "reasonable quantity" be defined as three 16 ounce bottles, noting that plaintiff had not convinced me that defendants were not entitled to some latitude in determining what quantity of prayer oil it is reasonable to allow plaintiff to keep in his cell. Now plaintiff has submitted a document titled "Petitioner Showing Cause to Amend Order" in which he asks the court to specifically define the phrase "reasonable quantity."

Plaintiff raises three issues in his motion. First, plaintiff notes that the vendor from

which he is allowed to order prayer oil does not have a catalog describing the different types of prayer oil that can be ordered. Second, plaintiff states that all “prayer oils have to come in plastic bottles with ‘embodied description’ on the . . . outside of the plastic bottle, which in turn ran the costs up.” As to these complaints, the first is insubstantial and the second is unintelligible.

Plaintiff’s final objection is to the amount of prayer oil he is allowed to keep in his cell. According to plaintiff, he is allowed to order only one ounce of prayer oil at a time, a supply that is typically exhausted in two weeks. The prayer oil itself costs \$4.50 per ounce, not including a \$4.00 shipping and handling charge. Accordingly, plaintiff maintains, he must spend \$8.50 every two weeks for prayer oil, even though he makes only \$17.00 every two weeks. Plaintiff maintains that these circumstances amount to a violation of this court’s order that he be allowed to keep a “reasonable quantity” of prayer oil in his cell and asks the court to define the term “reasonable quantity.” Although this case is currently pending on appeal, I note that this court retains jurisdiction to modify its previously ordered injunction. See Fed. R. Civ. P. 62(c) (“When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal”); Mayweathers v. Newland, 258 F.3d 930, 935-36 (9th Cir. 2001) (“The plain language of Rule 62(c) allows the district court to ‘suspend, modify, restore or grant an injunction’

during the pendency of defendant's . . . appeal, and such action can inure to the benefit of plaintiffs or defendants."); 12 Moore's Federal Practice, § 62.06[1] (Matthew Bender 3d ed.). Defendants may have until November 20, 2002, in which to respond to plaintiff's motion.

Entered this 30th day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge