IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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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.

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In this civil action for declaratory, monetary and injunctive relief, plaintiff James Kaufman contends that defendants violated his rights under the First Amendment by opening his legal mail, confiscating various publications, denying him permission to wear a religious emblem and access religious books on an equal basis with Christian inmates and issuing him a retaliatory disciplinary report. In addition, plaintiff contends that defendants Karlen and O'Donnell violated his Eighth Amendment rights by refusing to provide him with adequate quantities of soap.

Defendants contend that many of the denied publications that serve as the foundation of plaintiff's First Amendment claims implicate prison security interests. Not surprisingly therefore, discovery has been complicated and contentious, requiring the intervention of the magistrate judge at almost every turn. Now before the court are plaintiff's motions for reconsideration pursuant to 28 U.S.C. § 636(b)(1)(A) of the magistrate judge's December 7 and December 12, 2006 discovery orders. With one small exception, the magistrate judge's rulings were not "clearly erroneous or contrary to law," 28 U.S.C. § 636(b)(1)(A). Therefore, plaintiff's motion for reconsideration of the December 12, 2006 order will be denied and his motion for reconsideration of the December 7, 2006 order will be denied in part and granted in part. Defendants will be required to produce a copy of exhibits 21 and 22 of docket #36 to plaintiff because neither of those documents contains sexually explicit material.

A. December 7, 2006 Discovery Order

On December 8, 2006, Magistrate Judge Stephen Crocker granted defendants' motion for in camera inspection of potentially discoverable materials and granted in part and denied in part defendants' motion for a protective order. In his December 8 order, the magistrate required prison officials to turn over to plaintiff a photocopy of page 216 of the "Loompanics Unlimited 2003 Main Catalog." Prison officials had justified withholding the

document on the ground that it contained material that was "derogatory, inflammatory, contains sexual content, or teaches or advocates violence or hatred. The magistrate judge found that the material displayed on page 216 did none of these things. However, the judge granted the remainder of defendants' motion for a protective order, authorizing defendants to withhold from plaintiff other pages in the Loompanics catalog, pages from several books containing inflammatory, violent and sexually degrading jokes and numerous pages from sexually explicit books and magazines.

Plaintiff challenges several aspects of the December 7 order. First, he objects to the decision to deny him any pages from the Loompanics catalogue. Plaintiff appears to concede that prison officials could prohibit him from ordering, receiving or possessing many of the books advertised in the catalogue; however, he asserts that there is no reason to deny him the catalogue simply because it contains descriptions of prohibited materials. If the descriptions contained in the catalogue were minimal, then plaintiff might have a point. However, having reviewed portions of the catalogue in camera, I agree that it contains descriptions of certain books that are specific enough to raise security concerns related to the descriptions alone. The magistrate did not err in determining that none of the pages from the catalogue should be disclosed.

Plaintiff's only other substantive challenge relates to the magistrate judge's determination that defendants did not have to disclose documents marked Exhibits 21 and

22. Exhibit 21 is a printout of a page from the website of "qvMagazine," advertising a subscription special offer. Exhibit 22 is a letter thanking the recipient (who is identified only as "Friend") for purchasing the special offer. Although the descriptions of the magazine contained in both exhibits suggest that the magazine might contain sexually explicit material, nothing contained in Exhibit 21 or 22 is sexually explicit or in any other way inappropriate. Consequently, I find that it was error to permit defendants to withhold these exhibits from plaintiff. In all other respects, the December 7 order was not erroneous and was wholly consistent with established law.

B. December 12, 2006 Discovery Order

In an order date December 12, 2006, the magistrate judge denied plaintiff's motion to compel, in which plaintiff renewed his demand for defendants to provide him with copies of the material listed above and, additionally, to respond to requests for admission that contained only legal conclusions. I find no error in the magistrate's rulings, and will deny the motion for reconsideration.

Nevertheless, one matter raised in the motion deserves mention. In his motion to compel, plaintiff requested a list of all the books in the Jackson Correctional Institution's library. In his December 12 order, the magistrate judge stated:

Plaintiff requested a list of all fiction books available in the JCI library "so that

> I may point out exactly which books contain derogatory, inflammatory, and/or sexual content." The state objected, contending that the request was burdensome, oppressive and harassing; there are 18,040 books in the institution's libraries and the automation software is old and might require tweaking by the librarian, who has no staff assistance. According to the state, plaintiff may obtain virtually all of the requested information at a cited website. The state admits that this list does not include all of the institution's books and explains why not.
>
> The state has sufficiently demonstrated that the burden of complying with plaintiff's request outweighs any probative value the specific information and the specific format would have for plaintiff. Plaintiff may make his point about a double standard by using the cited database to obtain information. *So long as the available database presents a large, representative sample*, plaintiff is capable of finding titles of publications that he believes prove his evidentiary point. I am denying this subpart of plaintiff's motion.

Dkt. #38, at 2-3 (emphasis added). In his motion for reconsideration of the December 12 order, plaintiff alleges that the Wisconsin Secure Program Facility (the prison to which he was recently transferred) does not have access to the interlibrary loan database, making it impossible for him to access that database. Fair enough.

However, several days after plaintiff filed his motion for reconsideration, defendants' counsel, Lara Sutherlin, wrote to plaintiff acknowledging that the Wisconsin Secure Program Facility does not have access to the interlibrary loan database and offering "to have the J[ackson] C[orrectional] I[nstitution] librarian run a search of the library database for [plaintiff], if [he] provide[s] the parameters of the search." Assuming plaintiff responded, it appears that parties have settled this matter without the court's intervention.

Consequently, plaintiff's motion for reconsideration of the magistrate judge's December 12, 2006 order will be denied.

ORDER

IT IS ORDERED that

1. Plaintiff James J. Kaufman's motion for reconsideration of the magistrate judge's December 7, 2006 order is GRANTED in part and DENIED in part. Defendants are to provide plaintiff with a copy of Exhibits 21 and 22 of dkt. #36 by January 29, 2007.

2. Plaintiff's motion for reconsideration of the magistrate judge's December 12, 2006 order is DENIED.

Entered this 23d day of January, 2007.

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