

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

JOSEPH URBANIAK
Plaintiff

v.

**THEODIS BECK, SECRETARY OF
THE NC DOC; BOYD BENNETT,
DIRECTOR OF NC PRISONS; AND
JOSEPH HALL, ADMINISTRATOR
OF HARNETT CORR. INST.,**
Defendants

**EDWARD ALLEN, SHAWN
BONNETT, ANGEL GUEVARA,
SOVIET HOWIE, LYLE MAY, SAIYD
MUHAMMAD, S. SHANE SMITH, AND
LARRY SMITH on their own
behalf, and on behalf of all those
similarly situated,**
Plaintiffs

v.

**THEODIS BECK, SECRETARY OF
THE NC DOC; BOYD BENNETT,
DIRECTOR OF NC PRISONS; AND
CORDELIA CLARK, SPECIAL
PROGRAM MANAGER FOR THE
DIVISION OF PRISONS**
Defendants

No. 5:06-CT-3135-FL

**PLAINTIFFS' AND
DEFENDANTS'
MEMORANDUM IN
SUPPORT OF JOINT
MOTION TO
CONSOLIDATE
RELATED CASES AND
TO GRANT CLASS
CERTIFICATION OF
CONSOLIDATED CASE**

No. 5:07-CT-3145-H

INTRODUCTION

Presently pending in this District are two related actions, captioned above, brought by prisoners of the State of North Carolina against officials of the North Carolina Department of Correction (NC DOC). An action is now before the Court on a Joint

Motion for the consolidation and class certification of these cases pursuant to Rules 42(a) and 23(b)(2) of the Federal Rules of Civil Procedure. This Memorandum is filed in support of that motion.

MEMORANDUM

I. Background

On November 5, 2006, Joseph Urbaniak, an inmate within the North Carolina Department of Correction (NC DOC) filed the first above captioned complaint, *Urbaniak v. Beck, et al.*, 5:06-CT-3135-FL (EDNC), (hereinafter “*Urbaniak*”), against the NC DOC under the Civil Rights Act 42 U.S.C. sec. 1983, for illegally denying him access to his incoming books and magazines and for not permitting him to appeal his publication rejections. On May 11, 2007, Urbaniak filed an Amended Complaint to enforce his rights under the First Amendment to receive publications through the mail and under the Fourteenth Amendment to due process of law seeking injunctive and declaratory relief. This lawsuit is currently in the six month discovery stage.

On October 26, 2007, eight other inmates within the NC DOC filed the second above captioned class action complaint, *Allen v. Beck, et al.*, 5:07-CT-3145-H (EDNC), (hereinafter “*Allen*”), against the NC DOC basically alleging the same First and Fourteenth Amendment violations alleged in *Urbaniak*.

Today, for the economy and convenience served by consolidation and because Defendants do not oppose class certification, all of the parties in these two cases jointly move this Court to consolidate the two actions and to grant class certification of the consolidated case.

II. Argument

A. Consolidation of Cases

This Court should consolidate the *Allen* and *Urbaniak* cases for all purposes. Rule 42(a) of the Federal Rules of Civil Procedure provides that “[w]hen actions involving a common question of law or fact are pending before the court . . . it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” The Fourth Circuit has held that district courts have broad discretion under the Federal Rules of Civil Procedure to consolidate causes pending in the same district. *A/S J. Ludwig Mowinckles Rederi v. Tidewater Const. Co.*, 559 F.2d 928 (4th Cir. 1977).

1. Consolidation is Proper Because These Actions Involve Common Questions of Law and Fact

The actions pending before this Court present virtually identical factual and legal issues. Both cases were brought by North Carolina inmates under the Civil Rights Act 42 U.S.C. sec 1983 to enforce Plaintiffs’ rights under the First Amendment to receive publications through the mail and under the Fourteenth Amendment to due process of law. Complainants in both actions seek (1) specificity in publication rejection rationales; (2) timeliness of the publication screening and review process; (3) inmate viewing of disapproved publications for appeal purposes when doing so would not pose a security threat; and (4) no rejection of inmate publications which present no infringement of legitimate NC DOC penological interests. Both cases seek injunctive and declaratory relief. In addition, all Defendants in both actions are employees of the NC DOC and are sued in their official capacities. Finally, because legal counsel in both actions are the same, consolidation would be uncomplicated.

2. This Court Should Consolidate These Related Actions for Purposes of Efficiency

Consolidation would serve the economy and convenience of this Court and of all parties. Unification of these cases would expedite pretrial proceedings, simplify clerical and administrative management duties, and reduce the expenditure of time and money which would be required in multiple proceedings. In addition, consolidation would reduce the confusion and delay that may result from prosecuting these related actions separately.

3. This Court Should Consolidate These Related Actions to Avoid Duplicative and Possible Inconsistent Adjudications

Because the two lawsuits are virtually identical, maintaining two separate actions would harm both the Court and the parties by requiring multiple pleadings and multiple arguments on basically the same facts and law. Consolidation would promote certainty. If both actions are maintained separately, there is a substantial risk of inconsistent orders, which could greatly affect the interests of the parties. Consolidation is appropriate and desirable to all parties for each of these reasons.

B. Class Certification

The *Allen* plaintiffs filed a Motion and accompanying Memorandum in Support of Class Certification in which they moved this Court pursuant to Rule 23(b)(1) or Rule 23(b)(2) of the Federal Rules for an order allowing *Allen* to proceed as a class action on behalf of all North Carolina inmates who are or will be incarcerated by the North Carolina Department of Correction who subscribe to and are entitled to receive incoming publications subject to review under the North Carolina DOC Policy and Procedures

Chapter D. Section .0100 Publications Received/Possessed by Inmates. For the same reasons articulated in the *Allen* class action motion and supporting documents, Plaintiffs now seek Federal Rule 23(b)(2) class certification of a consolidated *Urbaniak/Allen* case on behalf of the same class. Defendants have no objections to the certification of that class under a consolidated *Urbaniak/Allen* case.

III. CONCLUSION

For all the reasons set forth in this memorandum, Movants ask this Court to grant the accompanying Motion for Consolidation and Class Certification.

This the 29th day of November, 2007.

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