

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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MICHAEL BEALS ELLIS, *et al.*, )  
Plaintiffs, )  
v. ) Civil Action No. 16-2313 (EGS)  
AMY BERMAN JACKSON, *et al.*, )  
Defendants. )

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**ORDER**

On February 3, 2017, the Court referred this action to Magistrate Judge Michael Harvey for full case management, up to and excluding trial, pursuant to Local Civil Rules 72.2 and 72.3. Shortly thereafter, on March 8, 2017, the government moved to consolidate the instant case with *Stanley v. Lynch*, No. 17-22, which had also been referred to Magistrate Judge Harvey for full case management. See Motion to Consolidate Cases, *Stanley v. Lynch*, No. 17-22, ECF No. 11.

On April 12, 2017, Magistrate Judge Harvey granted the government's consolidation request, reasoning that the two cases "make very similar allegations against the IRS, and share many of the same exhibits." See Order Granting Motion to Consolidate Cases ("Consolidation Order") at 5, *Stanley v. Lynch*, No. 17-22, ECF No. 18. Magistrate Judge Harvey noted that two of the plaintiffs overlapped both cases and that "the primary

allegations in both cases, which themselves are quite similar, are leveled against the IRS." *Id.* Accordingly, Magistrate Judge Harvey found "little risk of prejudice or confusion in joining the two cases" and determined that "doing so would lessen the burden on the parties and the Court of adjudicating th[e] dispute in two largely parallel actions." *Id.* Finally, to address plaintiffs' concern that a motion to dismiss was already pending in *Ellis* but not in *Stanley*, the court stated that it would permit plaintiffs "to make whatever additional pertinent arguments they wish before that motion is adjudicated following consolidation." *Id.*

Two weeks later, plaintiffs filed the instant motion captioned "Appeal to Judge Sullivan of Magistrate Harvey's Six Misrepresentations & Motion to Vacate Reference." See ECF No. 10. In that motion, plaintiffs make a series of objections to Magistrate Judge Harvey's characterization of their case in the Consolidation Order issued in *Stanley*. Plaintiffs further object to Magistrate Judge Harvey's denial of the various requests made by plaintiffs in their opposition to the government's motion to consolidate.

To the extent plaintiffs suggest that, absent their consent, a magistrate judge may not decide a motion for consolidation or other miscellaneous requests, the Court is unpersuaded. A motion for consolidation is not listed in 28

U.S.C. § 636(b)(1)(A) as a dispositive motion that a magistrate judge may not conclusively decide. To the contrary, other courts have found that a motion to consolidate qualifies as a non-dispositive matter that may be decided by the magistrate judge in the first instance. *See, e.g., In re Pinchuk*, No. 13-CIV-22857-DLG, 2014 WL 1153027, at \*2 (S.D. Fla. Mar. 17, 2014); *Sampson v. Lambert*, No. 8:07CV155, 2013 WL 2897017, at \*1 (D. Neb. June 12, 2013); *Rollins v. St. Jude Med., Inc.*, No. CIV.A. 08-0387, 2010 WL 1751821, at \*1, n.1 (W.D. La. Apr. 28, 2010).

Accordingly, the Court concludes that it must uphold the magistrate judge's decision absent a showing that the Consolidation Order is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). "Under this deferential standard, the magistrate judge's ruling must be affirmed unless on the entire evidence the court is left with the definite and firm conviction that a mistake has been committed." *Chennareddy v. Dodaro*, 698 F. Supp. 2d 1, 18 (D.D.C. 2009) (internal quotation marks and citation omitted).

This Court has carefully reviewed plaintiffs' appeal of the Consolidation Order and finds plaintiffs' objections to be completely meritless. Magistrate Judge Harvey properly considered the utility of consolidation under the relevant factors. He found that consolidation was proper given that the two cases had overlapping plaintiffs, sought relief for the same

causes of action, were supported by largely overlapping declarations and exhibits, and sought relief from defendants represented by the same DOJ counsel. Consolidation Order at 2. The Court finds no clear error in the magistrate judge's ruling.

Likewise, the Court finds that plaintiffs' objections to Magistrate Judge Harvey's denial of their miscellaneous requests are also meritless. Magistrate Judge Harvey found that plaintiffs' requests - which involve defining the relief plaintiffs are seeking in this action, taking judicial notice of certain documents, and compelling defendants to produce a document" - were either premature or improper. This Court agrees.

In short, the Court affirms Magistrate Judge Harvey's Consolidation Order. This case, which has been consolidated with *Stanley v. Lynch*, No. 17-22, continues to be referred to Magistrate Judge Harvey under the provisions of 28 U.S.C. § 636(b) and Local Civil Rules 72.2 and 72.3 for full-case management up to but excluding trial. Accordingly, plaintiffs' motion to vacate referral is **DENIED**.

**SO ORDERED.**

**Signed: Emmet G. Sullivan**  
**United States District Judge**  
**July 27, 2017**