

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD R. STANLEY, *et al.*,

Plaintiffs,

v.

LORETTA E. LYNCH, *et al.*,

Defendants.

Civil Action No.
1:17-cv-00022 (EGS/GMH)

MEMORANDUM OPINION AND ORDER

This matter was referred to the undersigned for full case management. Currently pending are Defendants' motion to consolidate [Dkt. 11] the instant case with *Ellis v. Jackson*, No. 16-cv-02313,¹ and *pro se* Plaintiffs' motion seeking various relief [Dkt. 16]. For the reasons stated below, Defendants' motion will be **GRANTED** and Plaintiffs' motion will be **DENIED**.

BACKGROUND

According to the government, this case is the last in a series of related cases in the past two years filed by *pro se* plaintiffs, all of which contain essentially the same claims that are raised in this action: that the Internal Revenue Service ("IRS") and the Department of Justice ("DOJ") are engaging in a conspiracy to file fraudulent tax returns on behalf of individuals who failed to file a tax return. Plaintiffs Michael Ellis and Robert McNeil, the only plaintiffs in *Ellis*, filed the complaint in that matter in November 2016. Complaint, *Ellis*, No. 16-cv-02313 (EGS) [Dkt. 1] (Nov. 18, 2016). Together with Plaintiff Harold Stanley, they filed the complaint in this matter in January

¹ The undersigned was also referred the *Ellis* matter for full case management.

2017. Complaint [Dkt. 1] (Jan. 4, 2017).² The complaints in both cases were amended at the end of January 2017. Amended Complaint [Dkt. 3] (Jan. 23, 2017); First Amended Complaint, *Ellis* [Dkt. 3] (Jan. 30, 2017).

The amended complaints state the same three causes of action: alleged violations of 5 U.S.C. § 702, and the First, Fourth, and Fifth Amendments. Amended Complaint, at 15–17; First Amended Complaint, *Ellis* [Dkt. 3] at 16–18. Both are supported by largely overlapping declarations by Plaintiff McNeil. Amended Complaint, Ex. A [Dkt. 3-1], at 1–7; First Amended Complaint, *Ellis*, Ex. B [Dkt. 3-1], at 63–73. Those declarations are followed by fifty-one pages of identical exhibits. *Compare* Amended Complaint [Dkt. 3-1], at 8–58, *with* First Amended Complaint, *Ellis* [Dkt. 3-1], at 74–124.

In both cases, Plaintiffs allege that the IRS engages in criminal falsification of records of individuals who file no income tax return. *See* Amended Complaint [Dkt. 3], at 2; First Amended Complaint, *Ellis* [Dkt. 3], at 3–4. While the complaint in this matter focuses on the fraudulent IRS program and its use in enforcement procedures, *see* Amended Complaint [Dkt. 3], at 2, the complaint in *Ellis* alleges that judges in this Court and this Circuit, along with Department of Justice (“DOJ”) attorneys, are involved in a conspiracy to “conceal and prolong” the fraudulent IRS program, First Amended Complaint, *Ellis* [Dkt. 3], at 3. Defendants in both cases are represented by the same DOJ counsel. Since the complaint in this matter was filed, eight more individuals, proceeding *pro se*, have moved to join the case, using identical motions.

The defendants in *Ellis* moved to dismiss that case a few weeks before moving in this case to consolidate this action with *Ellis*. Motion to Dismiss, *Ellis* [Dkt. 5] (Feb. 14, 2017); Motion to

² As required by the local rules of this Court, when they filed the complaint in this case, Plaintiffs also filed a Notice of Related Case identifying the *Ellis* matter. Notice of Related Case [Dkt. 2] (Jan. 4, 2017).

Consolidate Cases [Dkt. 11] (Mar. 8, 2017). Plaintiffs have filed oppositions to each of Defendants' motions. Memorandum in Opposition to Motion to Dismiss, *Ellis* [Dkt. 7] (Mar. 7, 2017); Response re: Motion to Consolidate Cases [Dkt. 15] (Mar. 21, 2017). The motions are now ripe for adjudication. The Court's decision on the motion to consolidate, along with the other miscellaneous relief sought by Plaintiffs, follows.³

LEGAL STANDARD

A district court has the authority to consolidate actions that “involve a common question of law or fact.” FED. R. CIV. P. 42(a)(2). In this Court, “cases are deemed related when the earliest is still pending on the merits in the District Court and they . . . (ii) involve common issues of fact, or (iii) grow out of the same event or transaction” LCvR 40.5(a)(3). A court has the discretionary power to decide whether cases before it should be consolidated, and it may consolidate them *sua sponte*. *Royer v. Fed. Bureau of Prisons*, 292 F.R.D. 60, 61 (D.D.C. 2013); *Nat'l Ass'n of Mortg. Brokers v. Bd. of Governors of the Fed. Reserve Sys.*, 770 F. Supp. 2d 283, 286 (D.D.C. 2011).

A court considering consolidating two cases must “weigh the risk of prejudice and confusion wrought by consolidation against the risk of inconsistent rulings on common factual and legal questions, the burden on the parties and the court, the length of time, and the relative expense of proceeding with separate lawsuits if they are not consolidated.” *Nat'l Ass'n of Mort. Brokers*, 770 F. Supp. 2d at 286. Consolidation is “particularly appropriate when the actions are likely to involve substantially the same witnesses and arise from the same series of events or facts.” *Hanson v. District of Columbia*, 257 F.R.D. 19, 21 (D.D.C. 2009); *see also Colbert v. F.B.I.*, 275 F.R.D. 30, 32–33 (D.D.C. 2011); *Middlebrooks v. Godwin Corp.*, 279 F.R.D. 8, 12–13 (D.D.C. 2011).

³ The Court will rule on Defendants' motion to dismiss after the parties have had an opportunity to update their briefs in support of, and in opposition to, that motion following consolidation.

DISCUSSION

A. Defendants' Motion to Consolidate

In support of their motion to consolidate, Defendants assert that the two cases “allege the same set of facts and ask for substantially the same relief.” Motion to Consolidate Cases [Dkt. 11] (Mar. 8, 2017), at 1. They note that Plaintiffs’ complaints in both cases each rely on a declaration by Robert A. McNeil. *Id.* Further, both cases “purport to be *Bivens*-type actions, in that they (improperly) name federal officials in their personal capacities and accuse such officials of perpetuating and concealing an IRS records falsification scheme, committing misprision of felony and other serious crimes in the process of said concealment, and generally trampling the rights of the plaintiffs and similarly situated individuals, i.e., non-filers upon whose behalf the IRS prepares substitutes for return.” *Id.* at 2. Finally, they assert that, “[i]n both cases, plaintiffs want the court to enjoin the IRS from preparing Substitutes for Return⁴ and to hold individual United States employees accountable for that practice.” *Id.* at 3.

Plaintiffs do not dispute that the two matters raise a common issue of fact. Plaintiffs’ Response to Motion to Consolidate & Motion to Resolve Two Issues Raised Therein [Dkt. 15] (Mar. 21, 2017), at 2. They describe this issue of fact as being “whether IRS falsifies records concerning nontaxpayers.” *Id.* at 4. Rather, Plaintiffs contend that “it would be a manifest denial of fundamental fairness” to consolidate the cases, because Defendants have moved to dismiss in *Ellis* “without mentioning the actual relief sought in that case, and did not join the core controversy.” *Id.* at 4–5.

⁴ A “Substitute for Return” is an income tax return prepared by the IRS on behalf of individuals who fail to prepare the return themselves. *See* 26 U.S.C. § 6020.

This Court consolidated two cases in *Hanson v. District of Columbia* over the objections of the plaintiffs. 257 F.R.D. at 21. One involved a “narrow challenge to the constitutionality” of the District of Columbia’s gun laws; the other challenged those laws with respect to “a host of other aspects.” *Id.* at 21–22; *see also Nat’l Ass’n of Mortg. Brokers*, 770 F. Supp. 2d at 287 (discussing *Hanson*). Here, the two cases at issue are even more similar. As Defendants note, the two cases make very similar allegations against the IRS, and share many of the same exhibits. The two plaintiffs in *Ellis* are two of the three Plaintiffs in this matter, and the primary allegations in both cases, which themselves are quite similar, are leveled against the IRS. This case merely extends those allegations to apply to actions taken by the IRS with respect to Plaintiff Stanley. For these reasons, the undersigned finds little risk of prejudice or confusion in joining the two cases, and finds that doing so would lessen the burden on the parties and the Court of adjudicating this dispute in two largely parallel actions. As for Plaintiffs’ concern that there is already a motion to dismiss pending in *Ellis*, the undersigned will permit them to make whatever additional pertinent arguments they wish before that motion is adjudicated following consolidation.

B. Plaintiffs’ Motions

Plaintiffs make a number of requests in their opposition to Defendants’ motion to consolidate, namely that the Court (1) issue a ruling defining the relief they are seeking in this action, *see* Plaintiffs’ Response [Dkt. 15] at 2–3, 4, 6–7; (2) take judicial notice of various filings and proceedings in this case and others filed by Plaintiffs, *see id.* at 5–6; and (3) compel Defendants to provide evidence supporting various representations made by their counsel in this case, *see id.* at 7.⁵ Each request is denied.

⁵ Plaintiffs also include a settlement offer of sorts in their opposition. They state that this case, and “all class cases,” can be concluded if the Defendants merely provide a “sworn declaration confirming that an IRS officer or employee

Plaintiffs' first two requests effectively ask the Court to take judicial notice of, and then decide, in part, the merits of this matter prior to its consolidation with *Ellis*. Plaintiffs believe they are entitled to an adjudication of the relief they are seeking now because Defendants' counsel, in her motion to consolidate, "raised" the "gravamen" of Plaintiffs' complaint. Plaintiffs are incorrect. Defendants' motion to consolidate did nothing more than outline the parties' dispute; it does not seek to adjudicate or "join" the merits of parties' dispute.⁶

Plaintiffs' request that this Court compel an evidentiary showing from Defendants is denied as premature. Assuming Plaintiffs prevail, discovery will proceed following adjudication of Defendants' motion to dismiss in these consolidated cases.

ORDER

For the reasons stated herein, it is hereby **ORDERED** that Defendants' motion to consolidate [Dkt. 11] is **GRANTED**; it is further

ORDERED that this case be consolidated with *Ellis v. Jackson*, No. 16-cv-2313. These cases will be consolidated as 16-cv-2313; it is further

ORDERED that Plaintiffs' motion for miscellaneous relief [Dkt. 16] is **DENIED**; and it is further

ORDERED that the following briefing schedule is set:

prepared the substitute income tax return concerning BOP Inmate . . . Harold Stanley. . ." *Id.* at 7–8. This request is improperly directed toward the Court which has no involvement in settlement negotiations between the parties.

⁶ Further, none of the facts that are the subject of Plaintiffs' request for judicial notice fall within the ambit of Federal Rule of Evidence 201. *See* Fed. R. Evid. 201(b) (permitting judicial notice of facts "not subject to reasonable dispute because . . . generally known within the trial court's territorial jurisdiction; or [that] can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"). Plaintiffs request that this Court take judicial notice of court records that reflect statements of government attorneys in other related matters and of decisions of a judicial officer in one of those matters who, according to Plaintiffs, wrongfully ruled against them, and, in so doing, committed fraud. None of these matters fall within the ambit of Rule 201.

Defendants may file an amended motion to dismiss addressing any issues unique to this matter on or before April 26, 2017;

Plaintiffs' opposition to Defendants' motion to dismiss is due on or before May 10, 2017;

Defendants' reply in support of their motion to dismiss is due on or before May 17, 2017.

SO ORDERED.

Date: April 12, 2017

G. MICHAEL HARVEY
UNITED STATES MAGISTRATE JUDGE