

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JOY PERRY, doing business as
FREEDOM THROUGH CHRIST PRISON
MINISTRY and PRISON PEN PALS, and
WRITEAPRISONER.COM, INC., a Florida
corporation,

Plaintiffs,

vs.

Case No. 3:09-cv-403-J-34JRK

BARRY REDDISH, in his official capacity
as Warden at Union Correctional
Institution, et al.,

Defendants.

ORDER

THIS CAUSE is before the Court on the parties' Joint Motion for Additional Briefing on Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment (Doc. No. 63; Joint Motion), filed on July 1, 2010. Plaintiffs filed their motion for summary judgment (Doc. No. 44; Plaintiffs' Motion for Summary Judgment) in this case on May 14, 2010. Defendants responded in opposition on June 15, 2010. See Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment (Doc. No. 55; Response to Plaintiffs' Motion for Summary Judgment). After Plaintiffs' Motion for Summary Judgment was filed, but before the Response to Plaintiffs' Motion for Summary Judgment was filed, Defendants informed Plaintiffs and the Court of a newly discovered witness, Steve Arnold (Arnold), and moved to reopen discovery for the limited purpose of allowing Plaintiffs an opportunity to depose him. See Defendants' Motion to Amend Case Management and

Scheduling Order (Doc. No. 48). The Court granted the requested relief, see Order (Doc. No. 59), and Arnold was deposed on June 30, 2010—after Plaintiffs’ Motion for Summary Judgment had been fully briefed. See Joint Motion at 1-2.

In their Response to Plaintiffs’ Motion for Summary Judgment, Defendants relied in part on a pre-deposition affidavit submitted by Arnold. See id. However, when Plaintiffs filed their Motion for Summary Judgment, they had not yet had an opportunity to question Arnold and had not been provided any supporting documentation as to the basis for his affidavit or testimony. See id. at 2. Accordingly, in the instant Joint Motion, the parties request that Plaintiffs be permitted to file a reply brief, directed only to issues related to Arnold’s testimony and not to exceed fifteen pages. See id. In the interests of fairness, they also request that Defendants next be permitted to file an equivalent surreply brief. See id.

Upon review of the instant Joint Motion and the record, the Court agrees that the parties should be given an opportunity to direct their arguments to the now-complete record. However, given the extensive briefing sought and the nature of the request, it appears to the Court that Plaintiffs’ Motion for Summary Judgment, as currently filed and briefed, may not properly frame or present the issues requiring resolution in this case. Indeed, allowing the parties to file the reply briefing as requested could create a confusing and possibly inconsistent record. Accordingly, the Court deems the more appropriate course to strike Plaintiffs’ Motion for Summary Judgment and Defendants’ Response to Plaintiffs’ Motion for Summary Judgment¹ and to allow the parties to file amended versions of the same

¹ Accordingly, the Court will deny as moot Plaintiffs’ Unopposed Motion for Oral Argument on Plaintiffs’ Motion for Summary Judgment (Doc. No. 45).

incorporating all arguments based on the complete record.² To that extent, the Court will grant, in part, and deny, in part, the Joint Motion.³

In light of the foregoing, it is **ORDERED**:

1. The parties' Joint Motion for Additional Briefing on Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment (Doc. No. 63) is **GRANTED, in part, and DENIED, in part.**
2. The Joint Motion is **GRANTED** to the following extent:
 - A. Plaintiffs' Motion for Summary Judgment (Doc. No. 44) is **STRICKEN.**
 - B. Defendants' Response in Opposition to Plaintiffs' Motion for Summary Judgment (Doc. No. 55) is **STRICKEN.**
 - C. On or before **July 26, 2010**, Plaintiffs shall file an amended motion for summary judgment.⁴
 - D. Defendants shall respond to Plaintiffs amended motion for summary judgment within **fourteen days.**
3. In all other respects, the Joint Motion is **DENIED.**

² The Court notes that Defendants have also filed a motion for summary judgment in this case, to which Plaintiffs have responded in opposition. See Defendants' Motion for Summary Judgment (Doc. No. 43; Defendants' Motion for Summary Judgment); Plaintiffs' Response to Defendants' Motion for Summary Judgment (Doc. No. 57). The parties have not requested any additional briefing as this motion, and thus the Court assumes it is not implicated by the late discovery of Arnold. Accordingly, the Court will leave unaltered the briefing as to Defendants' Motion for Summary Judgment. Should the parties deem an equivalent "rebriefing" appropriate as to Defendants' Motion for Summary Judgment, they may so move.

³ To allow time for the briefing provided for in this Order, the Court will modify the scheduling order currently in effect.

⁴ Plaintiffs were given leave to exceed the page limitations of the local rules with respect to their original summary judgment motion. This leave shall remain applicable to the amended motion directed herein.

4. Plaintiffs' Unopposed Motion for Oral Argument on Plaintiffs' Motion for Summary Judgment (Doc. No. 45) is **DENIED as moot**.
5. This case is removed from the October 2010 trial term, and the final pretrial conference currently scheduled before the undersigned on September 20, 2010, is cancelled.
6. Trial is reset for the February 2011 trial term before a visiting Judge. A pretrial conference will be set under separate notice before the same visiting Judge.

DONE AND ORDERED in Jacksonville, Florida, this 7th day of July, 2010.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record