

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GEORGE GOFF, WILLIAM BARBEE,)	
JIM DORSEY, TOM YARGES,)	CIVIL NO. 4:97-cv-90341
JEFF RAGLAND, JAMES HALL,)	
MICHAEL GUNN, JON JON KING,)	
ADAM TANNER, SAM ARCHER,)	REPORT AND RECOMMENDATION
MICHAEL O'DONNELL, PAT)	CONCERNING ADDITIONAL
CUPPLES, JEFF WINTERS,)	FACTUAL FINDINGS AND
and ART POYNER,)	DEFENDANTS' MOTION TO DISMISS
)	ON GROUND OF MOOTNESS
Plaintiffs,)	
)	
vs.)	
)	
LEONARD GRAVES, JAMES HELLING,)	
and BERNARD EAVES,)	
)	
Defendants.)	

This case has been recommitted to me for recommended factual findings concerning the sincerity of each individual plaintiff's beliefs in Eclatarianism and the sincerity issue in defendants' counterclaim. (January 29, 2001 Memorandum Opinion at 12-13). In the meantime defendants have filed a motion to dismiss on the ground of mootness with respect to those plaintiffs who have been discharged or transferred from the Iowa State Penitentiary (ISP) to other Iowa penal facilities. The motion is resisted. I will treat the motion as within the original reference. Regardless of the merits of the motion to dismiss I have made recommended findings on the sincerity issues as to all plaintiffs in compliance

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with the recommittal order except in the case of plaintiff Barbee. On April 9, 2001 the Court received correspondence from Barbee asking that his "name [be] removed" from this case. I view Barbee's letter as a motion for voluntary dismissal under Fed. R. Civ. P. 41(a)(1). I will recommend that motion be granted.

SINCERITY FINDINGS

The Report and Recommendation of November 20, 2000 and January 29, 2001 Memorandum Opinion partially adopting the same should be reviewed for the procedural and factual background of this case and the legal principles which guide decision.

Plaintiffs allege they are sincere believers in Eclatarianism, the doctrine on which the Church of the New Song (CONS) is based. The remaining issue is their request for injunctive relief from the denial by defendant ISP prison officials of banquet food to CONS members in lockup in connection with CONS' annual Celebration of Life banquet. In their counterclaim defendants contend CONS is nothing more than a prison gang and, it follows, that plaintiffs are insincere in their professed religious beliefs. The burden is on plaintiffs to establish their beliefs are sincerely held as an element of their § 1983 Free Exercise claim, and on defendants to show that plaintiffs are insincere to support their declaratory judgment counterclaim.

It is difficult to judge the sincerity of a person's religious beliefs. In reviewing the evidence the Court has considered each plaintiff's knowledge of the stated fundamental beliefs of CONS, its history and symbolism, and familiarity with CONS' principal doctrinal source, the "Paratestament." The Court has also looked at each plaintiff's record of attendance at CONS services and meetings, the length of time during which a plaintiff has claimed to be a member, and whether the plaintiff has participated in the church as a leader. The presence of such factors as these tends to indicate sincerity. See Iron Eyes v. Henry, 907 F.2d 810, 813 (8th Cir. 1990) (lifelong maintenance of Sioux religious beliefs and participation in religious ceremonies indicative of sincerity). Their absence on the other hand, does not necessarily tend to establish the opposite as there is no objective litmus test for religious sincerity. One can, for example, be a sincere Christian for constitutional purposes without attending church regularly or knowing much about the Bible. As with the determination of what is genuinely religious, courts should be careful not to demand too much in proof of religious sincerity. See Ochs v. Thalacker, 90 F.3d 293, 296 (8th Cir. 1996). Courts are not arbiters of what it takes to be a sincere believer in any particular religion any more than they are "arbiters of scriptural interpretation." Thomas v. Review Bd. of

Indiana Empl. Sec. Div., 450 U.S. 707, 716 (1981). In the end a sincerely held religious belief is simply one that is honestly held, see id., and involves an assessment of the plaintiff's credibility in light of objective indicators like those identified above.

Goff

Goff has been involved off and on in the Church of the New Song (CONS) since about 1972 when the church was first formed. (10/98 Tr. at 193). He has been an organizer of CONS in four Iowa prison facilities. As the initial Report and Recommendation indicated, he is one of those responsible for revitalizing CONS at ISP in the mid-1980s. (Report and Recommendation at 7). Goff has been a "sealed revelation minister" since 1972, that is, one who can ordain other "revelation ministers." (10/98 Tr. at 194; Ex. S-1). Goff was ordained by a representative of the "Bishop of Tellus" and founder of CONS, federal prisoner Harry Theriault. (10/98 Tr. at 194). Goff's testimony in general reveals substantial knowledge of the Paratestament about which he claims to know more than any other inmate. (Id. at 207-16). In fact, Goff had the original copy of the Paratestament at ISP from which all other copies have been made and distributed. (Id. at 201-02). Goff's longtime leadership role and record of commitment to CONS, together

with his comparatively thorough knowledge of CONS history and beliefs, is convincing evidence of his sincerity.

Dorsey

Dorsey testified he learned of CONS in about 1993-94 and attended services as much as he could when not in lockup. (10/98 Tr. at 42). Prison records provide some support for this testimony. Dorsey began attending CONS services in late 1993 and attended most of the time when he was eligible to do so. (Ex. X). He testified about what CONS meant to him (spiritual guidance and a sense of calm). (10/98 Tr. at 44). He has a copy of the Paratestament, which he said he reads from time to time, and he explained the central role of "Eclat," the spirit of the cosmos, in CONS doctrine. (Id. at 45-45; Report and Recommendation at 5; Ex. S-1). Dorsey's participation in CONS activities over a period of years and knowledge of CONS teachings are evidence of his sincerity.

Ragland

Ragland testified he had been a member of CONS for three to five years, and attended ninety percent of the CONS services when he was not in lockup. (10/98 Tr. at 72-73). This exaggerates his participation. Prison records show that Ragland first attended a service in May 1996 though he was previously eligible to attend. After that he attended about half the services until July 1996 when

he was placed in lockup for a lengthy period of time. When he was in lockup Ragland asked for and received counseling from a CONS inmate counselor. (Id. at 74). He was released from lockup in May 1998. In the period between May 1998 to the first evidentiary hearing in October 1998 Ragland attended CONS services or meetings twelve times. (Ex. X).

Ragland testified "Eclat" represents the spirit of the earth and that CONS was important to him. (10/98 Tr. at 75-78). He has a Paratestament which he reads "sometimes." (Id. at 73). At his pre-hearing deposition, however, he did not know who wrote the Paratestament, did not know when CONS was founded and was uncertain as to the meaning of the "3/h" CONS symbol.¹ (Id. at 82, 85). He also was unsure about the name of the Paratestament. (Id. at 82).

Ragland was not readily conversant with the Paratestament or history of CONS and had studied up some before his hearing testimony. He was aware of the meaning and of the role of Eclat in CONS beliefs, and had attended CONS services with more or less regularity when able to do so. He sought counseling when he was in lockup. Though a close question in his case, the preponderance of the evidence indicates Ragland is sincere in his belief in Eclatarianism.

¹ The symbol is the "Seal of Eclat" representing "head, heart and honor." (Ex. S-1).

Hall

At the time of hearing Hall had been in the Iowa penal system for about eight years, nearly all of that time at ISP. He testified he considered himself a member of CONS for the past four or five years. (10/98 Tr. at 89). He said he had not been able to attend services very often because he had been in lockup for most of his stay at the prison. (Id. at 90). Prison records support this. (Ex. X). He also testified that when he was allowed in the general population he went to services a couple of times. (Id.) Prison records, however, reflect that on the few occasions Hall was eligible to attend services he did not attend. He has, however, from time to time seen a CONS prisoner minister while in lockup and he testified this had given him peace of mind. (10/98 Tr. at 90-91). Hall also testified that being able to receive a Celebration of Life food tray while in lockup was important to him. (Id. at 92).

At his deposition, taken a few weeks before the hearing, Hall testified that he did not know the name of the CONS "Bible," the Paratestament. (Id. at 99). He was not familiar with the Paratestament and did not have one in his possession. (Id.) He could have had the opportunity to read the Paratestament, but admitted that he had not been "very devout." (Id. at 109). He did not know what the symbol of CONS was. (Id. at 101). Hall thought

prayer rugs had some significance in CONS observances, but there is no evidence prayer rugs have ever had anything to do with the religion. (Id. at 101-03).

Hall was not credible as an adherent to CONS. His minimal knowledge about CONS, lack of interest in learning more about it, and concession that he had not been a devout believer provide additional support for the conclusion that Hall is not a sincere believer in Eclatarianism.

King

King testified he first started his involvement with CONS in the summer of 1996. (10/98 Tr. at 112). Prison records reflect that King was in lockup continuously since June 1996 to just before the date of hearing. Prior to that, he was eligible to attend CONS services but did not do so. (Ex. X).

King testified he was just beginning to learn about the church and that he hadn't had a chance to "really dive into it yet." (Tr. at 113-14). He knew what the Paratestament was, but did not have one. (Id. at 115). He did not understand what the term "Eclat" meant. (Id.) At the time of hearing, the church was not a top priority for him. (Id. at 116).

The sum of King's testimony was that while he was interested in learning more about CONS, he had not done so yet and

it was not something he was actively pursuing. King is not a sincere believer in Eclatarianism.

Tanner, Archer, Poyner, O'Donnell, Gunn, and Winters

To save time at hearing the parties stipulated what the testimony of these plaintiffs would be had they testified:

. . . their testimony would reflect the testimony of the five inmates that the Court heard yesterday [Barbee, Dorsey, Ragland, Hall, and King]; that they are the plaintiffs in this case; that they have all spent substantial amount of their sentences at the Iowa State Penitentiary; that they are involved in the Church of the New Song; that they attend Church of the New Song services; that the church serves the purpose of religion in their lives and that they believe that they should have a Celebration of Life feast in April and if they are in lockup at that time, that a meal would help them make -- help make them feel a part of the community.

(10/98 Tr. at 124). Their depositions were also offered and received in evidence. (10/98 Tr. at 124-25, 188; Ex. T).² Except for Winters, who defendants called as a live witness, the Court is limited in assessing the credibility of these plaintiffs to the stipulation and written testimony.

(i) Tanner

Tanner testified he joined CONS in early 1996 when he was in lockup. (Ex. T, Tanner Depo. at 6). He had not had an

² The depositions of some of these plaintiffs are at variance with the stipulation and, where this is the case, the Court has relied on the actual testimony. The Court notes the stipulation also does not accurately reflect the testimony of all of the inmate plaintiffs it incorporated.

opportunity to attend CONS services because he had been released from lockup only a few weeks before the hearing. (Id.) Prison records support this testimony. (Ex. X). Tanner had a general understanding of Eclat as the "main teaching" of CONS, and while he was confused as to its name, was aware of the Paratestament and of the history of the church as derived from the writings of Bishop Theriault. (Ex. T, Tanner's Depo. at 7-9). Tanner's testimony taken together with the stipulation is sufficient to establish the sincerity of his belief in Eclatarianism.

(ii) Archer

Archer testified he became a member of CONS in 1995. (Ex. T, Archer Depo. at 4). He described himself as a frequent attendee at CONS services while he was in ISP. (Id. at 5). Archer left ISP in May 1998. (Id. at 3). Prison records indicate that in fact from April 1995 until May 1998 Archer frequently attended CONS services. (Ex. X).

Archer has a Paratestament which he had received about two months prior to the hearing. (Ex. T, Archer Depo. at 5). His testimony reflects a basic understanding of the role of Eclat in the religion, the meaning of the "3/h" CONS symbol, and the history of the church. The stipulation taken together with Archer's testimony establishes the sincerity of his belief in Eclatarianism.

(iii) Poyner

Poyner testified he has been affiliated to some extent with CONS since the late 1970s. (Ex. T, Poyner Depo. at 6). He also testified that since the 1990s when at ISP he attended services off and on when he was not in lockup. (Id. at 7-8). His testimony in this regard is generally consistent with prison records. (Ex. X).

Poyner has a Paratestament. His testimony reflects an understanding of the basic belief in Eclat, the history of CONS, and its symbolism. The stipulation taken together with Poyner's testimony establishes that he is a sincere believer in Eclatarianism.

(iv) O'Donnell

O'Donnell testified he had been a member of CONS since about 1993. (Ex. T, O'Donnell Depo. at 6). O'Donnell was in ISP until about 1997. (Id. at 5). He testified that while at ISP he attended CONS services regularly when he was not in lockup. (Id. at 15). Prison records indicate that the only relevant time period during which O'Donnell was not in lockup was between January 1994 and July 1996. During this time he did regularly attend CONS services. (Ex. X).

O'Donnell's knowledge of CONS history and beliefs was not as strong as some of the other plaintiffs. While he has a

Paratestament, O'Donnell could not remember its name. He knew what the 3/h's symbol meant. (Id. at 9-10). When asked what the teachings of CONS were he testified vaguely:

It's more or less just like the Bible just like an off-branch of it. You know, they refer to the Bible a lot, you know, different chapters of the Bible. You know, it's just a -- this other person's, you know, point of view of it, I guess.

(Id. at 6-7).

Notwithstanding O'Donnell's rather hazy understanding of his religion, the stipulation together with the commitment demonstrated by O'Donnell's comparatively strong record of attendance at CONS services when able to do so, tips the preponderance of the evidence in favor of a finding that he is a sincere believer in Eclatarianism.

(v) Gunn

Gunn testified he became involved with CONS at some point in 1995 and remained involved until he left ISP in 1996. (Ex. T, Gunn Depo. at 6). He said that prior to his switch to CONS membership in 1995 he was affiliated with the Identity Christian Evangelist (ICE) religion which, he admitted, had some racist beliefs. (Id. at 4-5). Gunn did not attend any CONS services between 1995 and 1996 because he was in lockup. (Id.) Prison records generally support this testimony. (Ex. X). He was eligible

to attend CONS services for a brief two-month period in August and September 1995, but prison records show he did not attend. (Id.)

Gunn described CONS' message as "[t]ruth, piece, [sic], freedom, justice." (Ex. T; Gunn Depo. at 5). His understanding of Eclat was not explored in his deposition. He knew what the Paratestament was, but had never had an opportunity to have one. (Id. at 7). He did not know what the 3/h's symbol stood for. (Id. at 6). He had some understanding of Theriault's role in founding the religion and authoring the Paratestament. (Id. at 9).

The problem with Gunn's deposition testimony is that it is inconsistent with his testimony in Gunn v. Burton, et al., Civil No. 4-96-cv-30405 (S.D. Ia. August 12, 1998) (Gunn Ruling) in which I was the trial judge.³ The Gunn case was tried the year before this one, in October 1997. In it Gunn claimed prison officials violated his First Amendment Free Exercise and Free Speech rights when they seized and refused to return a "Sacred Name Bible" and some documents Gunn claimed he needed to practice his ICE beliefs. (Gunn Ruling at 1-5). Gunn testified he had been a member of ICE

³ The Court takes judicial notice of its findings and conclusions in the prior case. See Kern v. Tri-State Ins. Co., 386 F.2d 754, 755 (8th Cir. 1967). The matter does not appear to be an adjudicative fact within the meaning of Fed. R. Evid. 201(a), but if plaintiff disagrees a request may be made under Rule 201(e) in connection with objections to this report and recommendation. See generally Qualley v. Clo-Tex Intern., Inc., 212 F.3d 1123, 1128 (8th Cir. 2000) (concerning the distinction between adjudicative and legislative facts).

from about 1995. (Id. at 5). Based on his testimony, the Court found that Gunn was sincere in religious beliefs related to ICE and issued a mandatory injunction requiring prison officials to return his ICE books and papers. (Id. at 10, 18).

Gunn's testimony in this case is inconsistent with his testimony in the prior case. It is constitutionally possible, perhaps, for a person to claim to be a sincere believer in two different religions at the same time, but Gunn testified in this case he was a member of ICE first and then CONS. In the former case, at a time when he now says he had switched to CONS, Gunn said he was a believer in ICE. The two religions are not at all similar in their beliefs.⁴ Wholly apart from considerations of judicial estoppel,⁵ Gunn's inconsistent testimony in the two cases, together with his limited knowledge of CONS and the generally undeveloped state of the record, lead to the conclusion he has not established he is a sincere believer in Eclatarianism.

⁴ ICE purports to be similar to Bible-centered Protestant religions and differs primarily in that it "espouses racial separation and the superiority of the 'White Anglo-Saxon, Germanic and kindred people'" as the "Children of Israel." (Gunn Ruling at 5). CONS does not, at least overtly, share the racial overtones of ICE and is far removed from any type of Protestant Bible-centered faith.

⁵ Hossaini v. Western Missouri Medical Center, 140 F.3d 1140, 1143 (8th Cir. 1998) ("judicial estoppel is limited to those instances in which a party takes a position that is clearly inconsistent with its earlier position.")

(vi) Winters

Winters testified that he became a member of CONS in 1995 and attended CONS services when he was not in lockup from 1995 until leaving ISP in May 1998. (Ex. T, Winters Depo. at 6-7). Prison records show that when he was eligible to attend CONS services from his first recorded attendance in May 1996 Winters attended about a third of the time. (Ex. X).

Winters evinced a more detailed and articulate understanding of CONS than many of the other plaintiffs. He coherently described CONS teachings as he understood them, their history as derived from Theriault and he knew the meaning of the 3/h's symbol. (Ex. T, Winters Depo. at 6-7, 9-10, 13, 16). He has had a Paratestament since 1995. (Id. at 9). Winters is a "sealed revelations minister" of CONS.

The stipulation, Winters knowledge of CONS' history and beliefs, role as a church leader, and record of participation establish the sincerity of his belief in Eclatarianism.

Cupples and Yarges

The same stipulation concerning the six plaintiffs just discussed was received in evidence with respect to plaintiffs Cupples and Yarges. However, depositions of Cupples and Yarges were not offered in evidence in connection with the stipulation. Prison records reflect that Cupples attended CONS most of the time

when he was eligible to do so from June 1993. (Ex. X). Yarges also attended most of the time during the same period when he was eligible to do so. (Id.) The record of attendance of these plaintiffs over a multi-year period together with the stipulation is sufficient to establish the sincerity of their beliefs in Eclatarianism.

Defendants, as counterclaimants, have not established affirmatively that any plaintiff is insincere in his professed belief in Eclatarianism. Preliminarily, for the reasons stated in the original Report and Recommendation at pages 21-22 a Court should be reluctant at the behest of prison officials to enter a declaratory judgment that an inmate is not sincere in his or her religious beliefs so that prison officials can deny the inmate an opportunity to participate in religious observances enjoyed by other inmates. Defendants' evidence on this point consists chiefly of the plaintiffs' violent criminal past, disciplinary history, record of conduct and the testimony of other inmates in the sealed record as summarized at pages 20-23 of the original Report and Recommendation. As noted therein, the credibility of the sealed record is questionable and, while plaintiffs are certainly not choirboys, their criminal past and prison behavior is not very probative of religious insincerity. Most, perhaps all, prisoners at ISP who claim a religion have at one time or another conducted

themselves in a manner inconsistent with the teachings of their religion.

MOTION TO DISMISS

Since recommitment for further findings defendants have filed a motion to dismiss on the ground of mootness which, as amended, pertains to the claims of plaintiffs Goff, Gunn, King, Tanner, Cupples and Archer. Gunn and Tanner have discharged their prison sentences. Goff has been transferred to a community corrections facility for work release. King has been transferred to a release center presumably preparatory to release from custody. Cupples and Archer have been transferred to the Newton Correctional Facility. Defendants argue that these transfers from ISP render plaintiffs' request for injunctive relief moot.⁶ The resisting plaintiffs respond that the circumstances place their claims in the "voluntarily cessation" exception to the mootness doctrine.

"When a case . . . no longer presents an actual, ongoing case or controversy, the case is moot and the federal court no longer has jurisdiction to hear it." Hickman v. State of Missouri, 144 F.3d 1141, 1142 (8th Cir. 1998) (quoting Neighborhood Transp.

⁶ In addition to the plaintiffs named in the motion, at the time of hearing O'Donnell and Poyner were at the Anamosa State Penitentiary (Ex. T, O'Donnell and Poyner Depos. at 5 and 1, 3 respectively) and Winters was at the Newton correctional facility. (Id.; Winters Depo. at 1, 7). Defendants do not move to dismiss with respect to these plaintiffs from which the Court assumes there is no present basis to find their claims moot.

Network, Inc. v. Pena, 42 F.3d 1169, 1172 (8th Cir. 1994). A case can become moot at any stage of the litigation. Id. at 1142; see Arizonans for Official English v. Arizona, 520 U.S. 43, 68 n.22 (1997). The Eighth Circuit has held that a prison inmate's claims for declaratory and injunctive relief concerning prison conditions ordinarily become moot when the inmate is transferred to another facility and is no longer subject to the conditions. Smith v. Hundley, 190 F.3d 852, 855 (8th Cir. 1999) (citing Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985)); see Herman v. Holiday, 238 F.3d 660, 665 (5th Cir. 2001); Hickman, 144 F.3d at 1142-43 (involving parolees).

Plaintiffs do not argue the "capable-of-repetition-yet-evading-review" exception to the mootness doctrine. It has been held unavailing in precisely this context. Smith, 190 F.3d at 855. The circumstances simply do not fit the narrow two-prong test for the exception. See Smith, 190 F.3d at 855. Rather, plaintiffs argue the "voluntary cessation" exception recently discussed by the U.S. Supreme Court in Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc., 528 U.S. 167, 189-94 (2000). When a defendant voluntarily stops doing what the plaintiff would enjoin, this exception places the burden on the party claiming mootness to show "that the challenged conduct cannot reasonably be expected to start up again" Id. at 189 (citing United

States v. Concentrated Phosphate Export Assn, Inc., 393 U.S. 199, 203 (1968). Otherwise a defendant could avoid judicial scrutiny and remain "free to return to his old ways." Id. (quoting City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 n.10 (1982), in turn quoting United States v. W. T. Grant Co., 345 U.S. 629, 632 (1953)). See Young v. Hayes, 218 F.3d 850, 852 (8th Cir. 2000).

The Court does not agree that an inmate's discharge of his sentence or transfer, in the subject plaintiffs' cases, to a less restrictive facility⁷ can reasonably be compared to the voluntary cessation of challenged conduct. The challenged conduct remaining at issue in this case is defendants' denial of Celebration of Life banquet food to CONS members in lockup. As far as the record indicates defendants have not ceased this practice and the plaintiffs who remain at ISP are still subject to it. There is no basis to conclude that the transfer and discharge of any of the plaintiffs resulted from anything other than the normal progression of their sentences. Smith, 190 F.3d at 855.

The motion to dismiss should be granted with respect to the claims of plaintiffs Goff, Gunn, King, Tanner, Cupples and Archer.

⁷ The Newton Correctional Facility is a medium security prison. Smith, 190 F.3d at 855.

ULTIMATE FINDINGS AND CONCLUSIONS

1. The Motion to Dismiss should be granted as to the claims of plaintiffs Goff, Gunn, King, Tanner, Cupples and Archer.⁸

2. Plaintiff Barbee's claims should be dismissed as a voluntary dismissal under Fed. R. Civ. P. 41(a);

3. Plaintiffs Dorsey, Yarges, Ragland, O'Donnell, Winters and Poyner have established that they are sincere believers in Eclatarianism.

4. Plaintiff Hall has not established that he is a sincere believer in Eclatarianism.

5. Defendants have not established affirmatively by their counterclaim that any plaintiff is insincere in his asserted belief in Eclatarianism.

RECOMMENDATION AND ORDER

IT IS RESPECTFULLY RECOMMENDED that the Court find and conclude as set forth above and enter judgment accordingly. To summarize, plaintiffs Dorsey, Yarges, Ragland, O'Donnell, Winters and Poyner should receive such injunctive relief from defendants' practice of denying Celebration of Life banquet food to CONS

⁸ If the Court does not grant the motion to dismiss in whole or in part then those of the plaintiffs named in paragraph 1 whose claims are not dismissed as moot are entitled to injunctive relief the same as the plaintiffs named in paragraph 3, except plaintiffs King and Gunn whose claims should be dismissed with those of plaintiff Hall for lack of proof of sincerity.

members in lockup as appropriate in light of the Memorandum Opinion of January 29, 2001. All other claims of said plaintiffs, and the claims of all other plaintiffs in their entirety, should be dismissed for the various reasons noted. Defendants' counterclaim should be dismissed in its entirety.

IT IS ORDERED that the parties have to and including **September 7, 2001** to file written objections, pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990). In view of the discrete factual and legal issues determined in this Report and Recommendation the parties will be expected to file their objections by the date indicated. Any objections filed must identify the specific portions of the Report and Recommendation to which the objections are made, and set forth the basis for such objections. See Fed. R. Civ. P. 72; Nix, 897 F.2d at 357. Failure to timely file objections may constitute a waiver of a party's right to appeal questions of fact. Thomas v. Arn, 474 U.S. 140, 155 (1985); Nix, 897 F.2d at 357.

IT IS SO ORDERED.

Dated this 21st day of August, 2001.

A handwritten signature in black ink, appearing to read "Ross A. Walters", written over a horizontal line.

ROSS A. WALTERS
CHIEF UNITED STATES MAGISTRATE JUDGE