

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Salvatore Zicarelli,)	
)	
<i>Plaintiff</i>)	
)	No. 17-cv-3179
-vs-)	
)	<i>(Judge Guzman)</i>
Thomas J. Dart, etc., et al)	
)	
<i>Defendants.</i>)	

**PLAINTIFF'S SECOND MOTION
TO AUTHORIZE ADDITIONAL DISCOVERY**

The predecessor judge denied plaintiff's first motion to authorize additional discovery because it was made "over 9 months after the trial date was set." (ECF No. 123.) This Court vacated the trial date on May 9, 2023. Plaintiff therefore respectfully renews his request to authorize additional discovery and states as follows:

1. Plaintiff filed this employment case on April 24, 2017. Summary judgment was granted to all defendants on June 18, 2018.

2. The Seventh Circuit reversed for trial after finding that plaintiff "has presented a genuine issue of material fact as to whether the Sheriff's Office violated [29 U.S.C.] § 2615(a)(1) when Shinnawi allegedly discouraged him from taking leave and as to whether these actions prejudiced him." *Zicarelli v. Dart*, 35 F.4th 1079, 1089 (7th Cir. 2022), *cert. denied*, 143 S.Ct. 309 (Oct. 11, 2022).

3. Plaintiff intends to prove at trial that “snowballing consequences, including even early retirement, [were proximately caused by] his conversation with Shinnawi.” 35 F.4th at 1090.

4. The full extent of these consequences were not and could not have been known until after the close of discovery in January of 2018.

5. Plaintiff intends to testify about the emotional trauma, psychiatric treatment, homelessness, and other PTSD symptoms that occurred after the close of discovery in January of 2018.

6. Defendants may seek exclusion of this evidence if they do not have an opportunity to take discovery to learn about plaintiff’s damage claims which arose after the grant of summary judgment on June 18, 2018.

7. Plaintiff should have an opportunity to marshal the evidence from his psychiatrists and other mental health treaters and to present expert psychiatric testimony to help the jury understand why Shinnawi’s words caused plaintiff to resign.

8. Then-district judge Rovner explain the standard for reopening discovery in *Kingsdown Med. Consultants, Ltd. v. Hollister Inc.*, 84 C 6113, 1990 WL 92817, at *6 (N.D. Ill. June 26, 1990), *aff’d*, 968 F.2d 1227 (Fed. Cir. 1992): a “party must offer a substantial showing that it did not have an incentive or opportunity to perform the requested discovery during the original discovery period.” *Id.* at *6. Here, neither party had an opportunity to take discovery

about the plaintiff's claims for damages that occurred after the grant of summary judgment. Also, plaintiff did not have an incentive to present expert testimony on damages until after his claims survived summary judgment.

It is therefore respectfully requested that the Court allow the parties 120 days to undertake additional fact and expert discovery.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 830399
Joel A. Flaxman
200 S Michigan Ave Ste 201
Chicago, IL 60604-2430
(312) 427-3200
knf@kenlaw.com
attorneys for plaintiff