

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

In re: WATTS COORDINATED  
PRETRIAL PROCEEDINGS )  
 ) Master Docket Case No. 19-cv-01717  
 )  
 ) Judge Franklin U. Valderrama  
 )  
 ) Magistrate Judge Sheila M. Finnegan  
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**JOINT DEFENDANTS' SUPPLEMENT TO THEIR MOTION FOR AN EXTENSION  
OF TIME TO COMPLETE FACT DISCOVERY IN THE 19 TEST CASES**

All Defendants, through their respective attorneys and per this Court's order, Dkt. 622, provide the following supplement to their Motion for an Extension of Time to Complete Fact Discovery in the 19 Test Cases. Dkt. 614.

## I. Witnesses Removed from the Depositions to Be Taken List

Defendants have agreed to remove the following from the list of additional depositions they were seeking to take: DEA Agent John Gonzalez, criminal defense attorney Matthew Mahoney, all line ASAs that were present for the Test Case Plaintiffs' guilty pleas/findings of guilt (other than ASA Nancy Nazarian), criminal defense attorneys Tim McGrath and Jeffrey Burt. Defendants will continue to review and evaluate this list and advise Plaintiffs' counsel of any other depositions they will not be seeking. Although counsel for the parties were preparing for the Waddy trial, Defense counsel still reached out to counsel for the Loevy & Loevy test plaintiffs in November to schedule depositions of third-party witnesses that were to be contacted through that firm. The request was essentially ignored and the opportunity to schedule additional depositions was lost.

II. Status of Subpoenas (outstanding subpoenas are attached as Exhibit A)

A. Criminal defense attorney files. Defendants have subpoenaed files from criminal defense attorneys or public defenders and have received files or been notified that files cannot be found/have been destroyed in 13 cases. Of the remaining six, two were issued on June 17, 2019, but Defendants were unable to find a response. One of those was issued to Patrick Boyle, attorney for Plaintiff Allen Jackson, who was to be deposed on November 30, 2023 and inquiry about whether or not he still had his file would have been made; however, Plaintiff's counsel informed Defendants' counsel that the deposition was being canceled and would be rescheduled. Defendants intend on issuing subpoenas to the remaining four attorneys (see Section V. below) should their motion for extension of time be granted.

B. IDOC phone calls. IDOC has provided phone logs and/or phone calls for a number of Test Cases plaintiffs or advised that certain Test Case plaintiffs had no phone logs or phone calls.<sup>1</sup> For the remaining four Test Case plaintiffs Allen Jackson, Henry Thomas, Philip Thomas, and Andre McNairy, Defendants advised Plaintiffs' counsel that they intended on issuing subpoenas for their phone calls for a limited number of calls. Plaintiffs' counsel objected and a Local Rule 37.2 conference was held on December 12, 2023 (on both the new subpoenas and access to previous calls produced by IDOC to Plaintiffs' counsel), but the parties were unable to resolve the impasse. Plaintiffs' counsel indicated they would be filing a motion to quash those subpoenas, and Defendants proposed a briefing schedule and await Plaintiffs' response to the proposed schedule. Defendants issued said subpoenas on December 12, 2023. IDOC acknowledged receipt of those subpoenas and requested an additional two weeks to respond.

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<sup>1</sup> Plaintiffs' counsel are in possession of, and have not produced to Defendants, the IDOC calls of Plaintiffs Clifford Roberts and Lionel White, Sr. and Defendants intend on filing a motion to compel some of those calls. In addition, Defendants possess IDOC calls for Plaintiffs Bobby Coleman, Milton Delaney, and William Carter, and Defendants intend of filing a motion for permission to listen to some of those calls.

Defendants are also seeking to subpoena the Federal Bureau of Prisons for Ben Baker's telephone calls for the approximately one year he served in federal prison for drug crimes. Defendants are already in possession of Baker's telephone calls while he was in the custody of IDOC.

C. Social Security. Defendants are working to identify if there are any Test Case plaintiffs that have sought or received any Social Security/Disability benefits, which would be relevant to damages.

D. Health Care and Mental Health providers. Defendants are making efforts to verify that all medical and mental health care records have been provided, including documents that were sought by way of subpoenas and requests for production. Some of the test case Plaintiffs have yet to provide responses to interrogatories about prior mental health and substance abuse treatment. Defendants have conferred with Plaintiffs' counsel on this topic, as recently as December 15, 2023, and have requested that outstanding discovery be responded to by Test case plaintiffs and to supplement prior discovery responses related to mental health and substance abuse treatment. The court's prior order of December 17, 2020 (Dkt. 172) found that this type of information is certainly discoverable. If any responsive documents are incomplete or have not been provided, Defendants will advise the Court of same. Defendants also subpoenaed Gateway Foundation for any substance abuse treatment for ten of the test case plaintiffs in October and are awaiting production of any responsive documents. Defendants also seek to serve a subpoena on the Gateway Foundation for substance abuse records, if any, of the remaining test case plaintiffs.

E. Adult Probation. The parties are finalizing agreed upon language for a draft order to the Cook County Adult Probation Department for records related to the underlying arrests that are at issue in the test cases.

F. Cook County State's Attorney's Office. A subpoena for emails for communications between Plaintiffs' counsel and the CCSAO was issued, but the SAO required payment of copying costs before those emails would be produced. Payment has been approved and Defendants will be in contact with the CCSAO, by the end of this year, to facilitate production of those e-mails.

III. Witnesses for which Plaintiff has Provided Phone Numbers

Defendants advised the Court that they would reach out to Plaintiffs' witnesses for which Plaintiffs' counsel provided a phone number. Defendants did, in fact, reach out to a number of those persons in order to schedule their depositions before the close of discovery and will continue to make calls to those that have not been reached. Defendants are attempting to schedule depositions that are convenient for the witnesses. Defendants also initiated efforts to have several of these witnesses served with deposition subpoenas. If the Court grants Defendants' motion for an extension of time to complete fact discovery in the Test Cases, Defendants will resume their efforts to serve and depose these witnesses.

It is worthy to note that with the December 4<sup>th</sup> Waddy trial being continued, Defendants saw that as an opportunity to undertake what this Court has repeatedly exhorted the parties to do: wrap up necessary discovery. Yet in response to Defendants' good faith efforts to serve and depose Plaintiffs' witnesses before the fact discovery deadline, Plaintiffs filed a Motion to Quash Deposition Subpoenas and Pause Non-Agreed Depositions. Dkt. 624. That means Plaintiffs' counsel is both refusing to schedule depositions to move discovery forward and opposing Defendants' requested extension of the fact discovery deadline. This is fundamentally unfair,

especially considering that Plaintiffs desire to conduct fact discovery past the current discovery deadline.

IV. Statements Made by Test Case plaintiffs to Federal Law Enforcement

Defendants previously sought statements made by certain test case plaintiffs to federal law enforcement during the course of their investigation, but so far no statements have been produced by the federal government. Defendants have not abandoned this request and want to apprise the Court to the possibility that they may seek intervention regarding any such statements made by certain Test Case plaintiffs.

V. Depositions of Plaintiff's Criminal Defense Attorneys

Defendants have contacted or attempted to contact each of the criminal defense attorneys who represented the Test Case plaintiffs. Dan Tsataros confirmed his availability to appear for a deposition after 1/8/2024. Deposition dates for remaining criminal defense attorneys: Richard Paull, Elizabeth Ribbeck, Richard Labrador, Daniel Freng, Terrence McCarthy, Kevin Ochalla and Fiaoni Karla have yet to be confirmed, however, the undersigned counsel (Leinenweber) continues to actively seek to schedule their depositions.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Anthony E. Zecchin, an attorney, hereby certify that December 15, 2023, I caused to be filed with the Clerk of the Court's CM/ECF system a copy of the JOINT DEFENDANTS' SUPPLEMENT TO THEIR MOTION FOR AN EXTENSION OF TIME TO COMPLETE FACT DISCOVERY IN THE 19 TEST CASES which simultaneously served copies on all counsel of record via electronic notification.

/s/ Anthony E. Zecchin