

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

SEAN McCLENDON,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 22-cv-5472
)	Honorable Sharon Johnson Coleman
CITY OF CHICAGO,)	Magistrate Maria Valdez
MILOT CADICHON, #17711,)	
BRYANT McDERMOTT, #12659,)	
ROBERT McHALE, #15902,)	
DONALD SMITH, #10257,)	
)	
Defendants.)	

**DEFENDANTS' OPPOSED MOTION FOR EXTENSION OF TIME
TO COMPLETE FACT DISCOVERY**

Defendants, MILOT CADICHON, BRYANT McDERMOTT, ROBERT McHALE, and DONALD SMITH, by and through their attorneys, JOHNSON & BELL, LTD., and Defendant, CITY OF CHICAGO, by and through its attorneys NATHAN KAMIONSKI, LLP jointly move this Honorable Court, for an extension of time to complete discovery up to and including February 28, 2024. In further support of this motion, Defendants state the following:

1. On October 5, 2022, Plaintiff Sean McClendon filed his complaint in this matter alleging Section 1983 claims and state law claims in connection with his October 10, 2014, arrest for aggravated unauthorized use of a weapon by a convicted felon, and subsequent conviction, and incarceration. [Dkt. #1].

2. Fact Discovery in this case is set to close on January 31, 2024. [Dkt. 64].

3. On January 10, 2024, Plaintiff and third-party witness Emmanuel Poe filed their motion to quash the Defendants' efforts to listen to and/or obtain recorded phone calls and calls logs from the Cook County Sheriff's Office and/or the IDOC. [Dkt. 70].

4. On January 10, 2024, Plaintiff also filed a motion to quash the deposition subpoenas of third-party witnesses Brittany Hill and Moneka Curtis. [Dkt. 71].

5. A hearing on both motions to quash was held before this Honorable Court on January 17, 2024. [Dkt. 72-73].

6. On January 19, 2024, this Honorable Court granted in part and denied in part Plaintiff and third-party witness Emmanuel Poe's motions to quash. [Dkt. 73].

7. This Honorable Court granted Defendants leave to obtain the IDOC call logs identifying any calls between Plaintiff and Poe's number, but the subpoena for the recordings must be limited to only the first conversation. [Dkt. 74].

8. This Honorable Court agreed to listen *in camera* to the recording of the first conversation between Plaintiff and third-party Ken Ross, which may have taken place while Plaintiff was in IDOC or CCJ custody, and granted Defendants leave to obtain the IDOC call logs to determine whether any calls were made to Ross's number. This Honorable Court further granted Defendants leave to subpoena the recording of the first call if the IDOC call logs determine whether any calls were made to Ross's number, and if there are no IDOC calls, then Defendants must submit to this Honorable Court the first CCJ call Defendants has in their possession. [Dkt. 74].

9. This Honorable Court denied Plaintiff's motion to quash the deposition subpoenas of Brittany Hill and Moneka Curtis, finding that their testimony could be relevant to Plaintiff's claim of damages stemming from his period of incarceration. [Dkt. 73-74].

10. This Honorable Court granted Plaintiff's motion to quash the subpoenaing of any phone calls between Plaintiff's criminal defense counsel, Peter Limperis, and Emmanuel Poe, reasoning that there are less intrusive ways to obtain that information, such as deposing Mr. Limperis.

11. On January 18, 2024, Defendant Robert McHale was deposed.

12. On January 24, 2024, Plaintiff's wife, LaToya McClendon, was partially deposed, with Plaintiff ending the deposition with the stated intention of seeking a protective order to preclude questioning about Plaintiff's 2023 arrest for gun possession.

13. On January 26, 2024, Defendant Milot Cadichon was deposed.

14. Officer Dorian Wright's deposition is scheduled for February 5, 2024.

15. The parties have not finalized dates for the depositions of Plaintiff's mother Lori Wesson, Brittany Hill, and Moneka Curtis.

16. The parties have been working diligently to complete discovery.

17. The district court has wide discretion in settling disputes, determining the scope of discovery, and otherwise controlling the manner of discovery. See, e.g., *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating & Air-Conditioning Eng'rs, Inc.*, 755 F.3d 832, 839 (7th Cir. 2014) (citation and quotation omitted).

18. A discovery schedule may be modified before the expiration of the prior deadline "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4); see Fed. R. Civ. P. 6(b)(1).

19. No party would be prejudiced by extending the discovery deadlines. On the other hand, holding the parties to the current discovery schedule would surely result in severe prejudice to Defendants, as they would be denied the amount of time they reasonably need to finish discovery that was the subject of Plaintiff's partially denied motions to quash.

20. This motion is not interposed to cause needless delay, but to afford all parties the opportunity to conduct relevant discovery pertaining to the facts in the case.

21. On January 31, 2024, Defendants corresponded with Plaintiff's counsel regarding the instant motion. Plaintiff opposes Defendants' request for extension of time. Plaintiff advised that he will promptly file a memorandum in opposition.

Defendants, MILOT CADICHON, BRYANT McDERMOTT, ROBERT McHALE, and DONALD SMITH, and THE CITY OF CHICAGO, respectfully request that this Honorable Court enter an order for an extension of time to complete discovery up to and including February 28, 2024 to 1) depose Moneka Curtis, Brittany Hill, and Peter Limperis, and complete the deposition of Latoya McClendon absent a protective order prohibiting such completion, 2) to subpoena the IDOC call logs and telephone calls relevant to this Court's ruling on Plaintiff's motions to quash, and 3) submit the first Ken Ross call and first Emmanuel Poe call (if the latter can be located) to this Honorable Court for *in camera* review.

Dated: January 31, 2024

Respectfully submitted,

JOHNSON & BELL, LTD.

By: /s/ Lisa M. McElroy
Brian P. Gainer
Lisa M. McElroy
JOHNSON & BELL, LTD.
33 W. Monroe St., Ste. 2700
Chicago, Illinois 60603
(312) 372-0770
gainerb@jbltd.com
mcelroy1@jbltd.com
Attorneys for Cadichon, McDermott, McHale, and Smith

By: /s/ Brian Wilson
Avi Kamionski
Shneur Nathan
Brian Wilson
Special Assistant Corporation Counsel
NATHAN & KAMIONSКИ, LLP
33 W. Monroe, Suite 1830
Chicago, IL, 60603

(312) 957-6649
bwilson@nklawllp.com
Attorneys for Defendant City of Chicago

CERTIFICATE OF SERVICE

I, Lisa M. McElroy, hereby certify that, in accordance with Fed. R. Civ. P. 5 and LR 5.5 and the General Order on Electronic Case Filing (ECF), I served the foregoing, electronically via the ECF-CM system on January 31, 2024.

By: /s/ Lisa M. McElroy
One of the attorneys on behalf of
Defendants Cadichon, McDermott, McHale,
and Smith

Brian P. Gainer (gainerb@jbltd.com)
Lisa M. McElroy (mcelroyl@jbltd.com)
JOHNSON & BELL, LTD.
33 W. Monroe St., Ste. 2700
Chicago, Illinois 60603
(312) 372-0770