

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TROY HENDRIX,

Plaintiff,

vs.

ANTHONY J. ANNUCCI, JAMES
O’GORMAN, JOSEPH BELLNIER,
PATRICK REARDON, JUSTIN THOMAS,
JOHN COLVIN,

Defendants.

Case No. 9:20-cv-00743-GTS-TWD

STIPULATION

WHEREAS, Defendants filed a Motion for Summary Judgment on March 24, 2023 (Dkt. 108);

WHEREAS, Plaintiff filed an opposition to Defendants’ Motion for Summary Judgment on May 15, 2023 (Dkt 114);

WHEREAS, Plaintiff filed a letter motion to amend complaint on July 14, 2023 (Dkt. 122); and

WHEREAS, the Court granted Plaintiff leave to depose non-party Kevin McCarthy and denied Plaintiff’s request to amend the complaint to add Kevin McCarthy as a defendant without prejudice to renewal after the deposition (Dkt. 126); and

WHEREAS, Plaintiff deposed non-party Kevin McCarthy on August 29, 2023; and

WHEREAS, Plaintiff wishes to supplement his opposition to the Motion for Summary Judgment;

WHEREAS, the parties agree, in the interest of judicial economy, to defer any potential renewal of Plaintiff’s motion to amend the complaint to add Kevin McCarthy as a defendant until the Court decides the pending Motion for Summary Judgment;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned:

1. Plaintiff may file a supplemental brief in opposition to the Motion for Summary Judgment, limited only to new issues or arguments arising from the deposition of Mr. McCarthy, by November 21, 2023;
2. Defendants may file a response to Plaintiff’s supplemental briefing by December 15, 2023;

3. Following the Court's decision on the Motion for Summary Judgment, and only if Defendants' Motion for Summary Judgment is not granted in its entirety, Plaintiff, within thirty (30) days of the Court's decision, may file a renewed motion for leave to amend the complaint to add Kevin McCarthy as a defendant;
4. Defendants shall waive any arguments regarding timeliness or delay in defense of any motion for leave to amend or motion to amend the complaint to add Kevin McCarthy as a defendant only for the time period from the filing of Plaintiff's letter motion to amend the complaint, Dkt. 122, to thirty (30) days from the Court's decision on Defendants' Motion for Summary Judgment. Defendants maintain and reserve all other defenses available to any renewed motion by Plaintiff to amend the complaint;
5. Following a decision by the Court on a renewed motion to amend the complaint, and pursuant to the Court's discretion and willingness to allow further discovery, the parties shall meet and confer in good faith regarding any further discovery from or related to Kevin McCarthy;
6. This stipulation is entered into subject to and without waiver of other defenses or rights either party may have.

Dated: November 9, 2023

/s/Cassandra Liu

Cassandra Liu
Bar Roll No. 701850
Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Email: cassandra.liu@sidley.com

Attorney for Plaintiff

/s/Patrick M. Domery

Patrick M. Domery
1220 Washington Avenue
Albany, New York 12226
Telephone: (518) 457-4951
Email: Patrick.domery@doccs.ny.gov

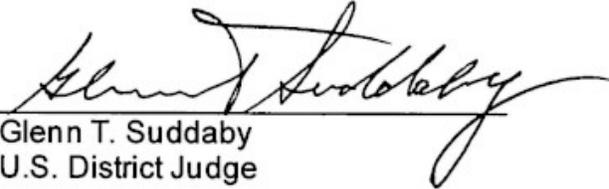
*Attorney for New York State Department of
Corrections*

/s/Matthew J. Gallagher

Matthew J. Gallagher
Assistant Attorney General, of Counsel
Bar Roll No. 701111
The Capitol
Albany, New York 12224
Telephone: (518) 776-2284
Email: Matthew.Gallagher@ag.ny.gov

Attorney for Defendants

So Ordered:



Glenn T. Suddaby
U.S. District Judge

Dated: November 13, 2023