

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

JUAN CANDELARIA, 89-T-5069,

Plaintiff,

04-CV-0277E(Sr)

LAURENCE HIGLEY, et al.,

Defendants.

DECISION AND ORDER

Plaintiff filed his original complaint on April 9, 2004. Dkt. #1. Since that time, he has filed an amended complaint (Dkt. #4), and supplemental complaint (Dkt. #13), moved to withdraw the action (Dkt. #14), moved to reopen the action (Dkt. #16), and filed a second supplemental complaint. Dkt. #21.

Following an Order granting defendants' motion to dismiss several of the defendants and several causes of action (Dkt. #44), plaintiff advised the Court that he intended to file a third amended complaint, prompting the Court to stay defendants' deadline to answer. Dkt. #46.

By motion dated February 18, 2009, plaintiff complains that the transfer of his legal papers has been delayed following his recent transfer to Green Haven Correctional Facility and states, "if I cannot complete the underlying proposed third amended complaint within the next three month[s] due to lack of access to law

library/legal supplies, I hereby ask that the defendants be directed to answer the second supplemental complaint in [the] Court's file." Dkt. #48.

The Court is concerned that although this was commenced in 2004 and involves incidents alleged to have occurred as far back as 2001, this case has remained at a standstill and no discovery has taken place. The Court notes that plaintiff first expressed his intent to file a third amended complaint on April 2, 2008.

As the motion to dismiss the second supplemental complaint has been resolved and the second supplemental complaint is, therefore, currently in a procedural posture to move forward, the Court declines to delay this action further and directs that defendants answer the second amended complaint no later than **March 13, 2009**.

SO ORDERED.

**DATED: Buffalo, New York
February 24, 2009**

**S/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge**