

***** PUBLIC DOCKET *****

**U.S. District Court
Southern District of Indiana (Indianapolis)
CIVIL DOCKET FOR CASE #: 1:23-cv-01614-MPB-MG**

MOTON v. THOMAS
Assigned to: District Judge Matthew P. Brookman
Referred to: Magistrate Judge Mario Garcia
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 09/08/2023
Jury Demand: Defendant
Nature of Suit: 555 Prisoner Petitions -
Prison Condition
Jurisdiction: Federal Question

Plaintiff

ANDRE MOTON

represented by **ANDRE MOTON**
231926
NEW CASTLE - CF
NEW CASTLE CORRECTIONAL
FACILITY - Inmate Mail/Parcels
1000 Van Nuys Road
P.O. Box E
NEW CASTLE, IN 47362
PRO SE

V.

Defendant

PATRICK THOMAS
Correctional Officer Sgt.

represented by **Gustavo Angel Jimenez**
INDIANA ATTORNEY GENERAL
Indiana Government Center South, 5th
Floor
302 West Washington St.
Indianapolis, IN 46204-2770
317-232-6201
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ATTORNEY TO BE NOTICED

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937-474-0197
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
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09/08/2023	<u>1</u>	CONSENT to Prisoner E-Service by ANDRE MOTON located at PENDLETON CF. Pursuant to General Order 2013-1, documents submitted by ANDRE MOTON to the court for filing will generate a Notice of Electronic Filing that will constitute official service upon registered users of CM/ECF. If any parties to the case are not registered CM/ECF users, the Clerk of the Court will mail the document via U.S. Postal Service on behalf of the inmate. NOTE: The E-Filing Program does not affect the obligation of other parties to serve copies of documents in accordance with the Federal Rules of Civil Procedure. (DJH) (Entered: 09/08/2023)
09/08/2023	<u>2</u>	COMPLAINT against P. THOMAS, filed by ANDRE MOTON. (No fee paid with this filing) (Attachments: # <u>1</u> Exhibits including records for grievance appeal and disciplinary hearing)(DJH) (Entered: 09/08/2023)
09/08/2023	<u>3</u>	MOTION for Leave to Proceed in forma pauperis, filed by Plaintiff ANDRE MOTON. (Attachments: # <u>1</u> Resident Activity Report)(DJH) (Entered: 09/08/2023)
09/08/2023	<u>4</u>	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (DJH) (Entered: 09/08/2023)
09/08/2023	<u>5</u>	Notice to File Rule 7.1 Disclosure Statement. (RAGS) (DJH) (Entered: 09/08/2023)
09/11/2023	<u>6</u>	ORDER granting Plaintiff's <u>3</u> Motion for Leave to Proceed in forma pauperis - The plaintiff's motion to proceed in forma pauperis, dkt. [<u>3</u>], is granted to the extent that the plaintiff is assessed an initial partial filing fee of Six Dollars and Twenty-Three Cents (\$6.23). See 28 U.S.C. § 1915(b)(1). The plaintiff shall have October 9, 2023, in which to pay this sum to the clerk of the district court. See Order for additional information. Copy to Finance Department via Email. Signed by District Judge Matthew P. Brookman on 9/11/2023. (SWM) Modified on 9/12/2023 (SWM). (Entered: 09/12/2023)
09/12/2023	<u>7</u>	NOTICE to Pro se Litigant - The following information is provided to pro se litigants to inform them about rules and procedures governing how they communicate with the Court. (JRT) (Entered: 09/12/2023)
10/26/2023	<u>8</u>	MOTION to Waive Partial Filing Fee, filed by Plaintiff ANDRE MOTON. (JSR) (Entered: 10/26/2023)
10/27/2023	<u>9</u>	Order Granting Motion to Waive Initial Partial Filing Fee, Screening Complaint, and Directing Further Proceedings - <u>8</u> Motion to Waive Initial Partial Filing Fee is GRANTED to the extent that the Court will issue a collection order by separate order to facilitate collection of the filing fee for this case. An Eighth Amendment deliberate indifference claim shall proceed against Sgt. Thomas. The clerk is directed pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to defendant Sgt. P. Thomas in the manner specified by Rule 4(d). Process shall consist of the complaint, dkt. <u>2</u> , applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order. The clerk is directed to serve the Sgt. Thomas electronically. See Order for details. Signed by District Judge Matthew P. Brookman on 10/27/2023. (LBT) (Entered: 10/27/2023)
10/27/2023	<u>10</u>	NOTICE of Lawsuit & Waiver Issued by Clerk to Sgt. P. Thomas. (LBT) (Entered: 10/27/2023)
10/27/2023	<u>11</u>	Documents to be Sent via Electronic Notice - re <u>2</u> Complaint, <u>10</u> NOTICE of Lawsuit & Waiver Issued by Clerk, <u>9</u> Order on Motion. Electronic Notice to IDOC. (LBT) (Entered: 10/27/2023)
10/27/2023	<u>12</u>	ORDER Directing Monthly Payments be made from Prison Account of ANDRE MOTON, 231926. As of the issuance of this Order, the balance of the filing fee still due in this case is

		\$350.00. See Order for details. Signed by District Judge Matthew P. Brookman on 10/27/2023 (Copy mailed to Warden, Pendleton CF).(LBT) (Entered: 10/27/2023)
12/14/2023	13	ENTRY DIRECTING SERVICE OF PROCESS - The Court screened the plaintiff's complaint and issued process on October 27, 2023, but Defendant Officer P. Thomas has not waived service. The clerk is designated pursuant to Fed. R. Civ. P. 4(c)(3) to reissue process to Officer P. Thomas. Process shall consist of the complaint, dkt. 2 , screening order, dkt. 9 , applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Entry. Signed by Magistrate Judge Mario Garcia on 12/14/2023.(JRB) (Entered: 12/14/2023)
12/14/2023	14	NOTICE of Lawsuit & Waiver Issued by Clerk as to Sgt. P. Thomas. (JRB) (Entered: 12/14/2023)
12/14/2023	15	Documents to be Sent via Electronic Notice - re 14 NOTICE of Lawsuit & Waiver Issued by Clerk, 2 Complaint, 13 Entry, 9 Order on Motion Electronic Notice to IDOC. (JRB) (Entered: 12/14/2023)
01/24/2024	16	ENTRY DIRECTING SERVICE OF PROCESS - The Court screened the plaintiff's complaint and issued process on October 27, 2023, and reissued process on December 14, 2023, but the defendant has not waived service. The clerk is designated pursuant to Fed. R. Civ. P. 4(c)(3) to reissue process to Sgt. P. Thomas. Process shall consist of the complaint, dkt. 2 , screening order, dkt. 9 , applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Entry. The clerk is directed to serve Sgt. Thomas electronically. Signed by Magistrate Judge Mario Garcia on 1/24/2024. (JSR) (Entered: 01/26/2024)
01/24/2024	17	NOTICE of Lawsuit & Waiver Issued by Clerk upon: Sgt. P. Thomas (JSR) (Entered: 01/26/2024)
01/24/2024	18	Documents to be Sent via Electronic Notice - re 17 NOTICE of Lawsuit & Waiver Issued by Clerk, 16 Order, 2 Complaint, 9 Order on Motion. Electronic Notice to IDOC. (JSR) (Entered: 01/26/2024)
01/30/2024	19	NOTICE of Appearance by Gustavo Angel Jimenez on behalf of Defendant P. THOMAS. (Jimenez, Gustavo) (Entered: 01/30/2024)
01/30/2024	20	NOTICE of Appearance by James Michael Sedam on behalf of Defendant P. THOMAS. (Sedam, James) (Entered: 01/30/2024)
01/30/2024	21	WAIVER OF SERVICE Returned Executed, filed by P. THOMAS. P. THOMAS waiver sent on 1/24/2024. (Jimenez, Gustavo) (Entered: 01/30/2024)
03/25/2024	22	<i>Defendant's ANSWER to 2 Complaint , Affirmative Defenses, and Demand for Jury Trial</i> , filed by P. THOMAS.(Jimenez, Gustavo) (Entered: 03/25/2024)
03/27/2024	23	ORDER SETTING PRETRIAL SCHEDULE AND DISCUSSING DISCOVERY IN PRISONER LITIGATION: This Order sets the schedule for how this action shall proceed. Part I sets forth the pretrial deadlines. Part II discusses various aspects of discovery. Facilitating the discovery process can be difficult, and this Order is issued in an effort to help explain and streamline the process for the parties. The parties should carefully read this Order. *SEE ORDER FOR ADDITIONAL INFORMATION*. Dispositive Motions due by 10/28/2024. Discovery due by 9/26/2024.. Signed by Magistrate Judge Mario Garcia on 3/27/2024.(LF) (Entered: 03/28/2024)
05/03/2024	24	NOTICE of Substitution of Appearance by Hannah Lynette Hulsey replacing <i>James M. Sedam</i> on behalf of P. THOMAS (Hulsey, Hannah) (Entered: 05/03/2024)

05/28/2024	<u>25</u>	NOTICE of Service of Initial Disclosures , filed by Defendant P. THOMAS. (Jimenez, Gustavo) (Entered: 05/28/2024)
06/05/2024	<u>26</u>	MOTION to Take Deposition from Andre Moton , filed by Defendant P. THOMAS. (Attachments: # <u>1</u> Text of Proposed Order)(Jimenez, Gustavo) (Entered: 06/05/2024)
06/07/2024	<u>27</u>	ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO DEPOSE PLAINTIFF - Defendant, by counsel, filed a motion asking for leave to take the deposition of Plaintiff Andre Motion, an incarcerated individual. The Court, being duly advised, now GRANTS the motion. Defendants are granted leave to depose Plaintiff Andre Motion, an inmate held in the custody of the Indiana Department of Correction, at a date to be arranged with the facility and prior to the close of discovery. Said deposition may be taken via a videoconferencing service. Signed by Magistrate Judge Mario Garcia on 06/07/2024. (AJG) (Entered: 06/07/2024)
07/22/2024	<u>28</u>	AFFIDAVIT by ANDRE MOTON. (JRB) (Entered: 07/22/2024)
08/12/2024	<u>29</u>	NOTICE of Substitution of Appearance by Alexander Thomas Myers replacing <i>Hannah L. Hulsey</i> on behalf of P. THOMAS (Myers, Alexander) (Entered: 08/12/2024)
08/21/2024	<u>30</u>	REQUEST for Production of Documents, filed by Plaintiff ANDRE MOTON. (JSR) (Entered: 08/21/2024)
08/26/2024	<u>31</u>	NOTICE <i>regarding Settlement Conference</i> , filed by Defendant P. THOMAS (Jimenez, Gustavo) (Entered: 08/26/2024)
09/16/2024	<u>32</u>	MOTION to Compel <i>Discovery Responses</i> , filed by Defendant P. THOMAS. (Attachments: # <u>1</u> Exhibit A - Defendants' Rule 37 Letter to Plaintiff with Copies of RFP's and Interrogatories to Plaintiff on August 26, 2024, # <u>2</u> Exhibit B - Service Letter: Defendants' Requests for Interrogatories and RFP's to Plaintiff on July 18, 2024, # <u>3</u> Text of Proposed Order)(Jimenez, Gustavo) (Entered: 09/16/2024)
10/11/2024	<u>33</u>	NOTICE of Change of Address for ANDRE MOTON to New Castle Correctional Facility and Copy Request. ANDRE MOTON is no longer participating in E-Service. Public Docket Sheet provided via US Mail. (Attachments: # <u>1</u> Public Docket Sheet) (AAS) (Entered: 10/15/2024)
10/17/2024	<u>34</u>	ORDER - Defendant filed a motion to compel, arguing that he served interrogatories and requests for production on Plaintiff but that Plaintiff did not respond to the discovery requests or his counsel's letter attempting to resolve the dispute. Dkt. <u>32</u> . The motion to compel, dkt. <u>32</u> , is granted. On or before November 12, 2024, Plaintiff shall serve responses to the discovery requests attached to Defendant's motion to compel by mailing them to Defendant's counsel. The Court also sua sponte extends the deadline for filing summary judgment motions up to and including December 12, 2024. The clerk is directed to enclose a copy of Defendant's motion to compel and attached discovery requests, dkt. <u>32</u> , [32-1], and [32-2] with Plaintiff's copy of this Order. Signed by Magistrate Judge Mario Garcia on 10/17/2024. (See Order.) Copy mailed to Plaintiff. (Attachments: # <u>1</u> Mot to Compel Dkt. 32, # <u>2</u> Mot to Compel Dkt. 32-1, # <u>3</u> Mot to Compel Dkt. 32-2) (BAA) (Entered: 10/18/2024)
10/24/2024	<u>35</u>	NOTICE of Substitution of Appearance by Steven Reidell replacing <i>Alexander T. Myers</i> on behalf of P. THOMAS (Reidell, Steven) (Entered: 10/24/2024)
11/15/2024	36	RECEIPT #12994 for Partial Filing fee in the amount of \$350.00, paid by ANDRE MOTON. (CCG) (Entered: 11/15/2024)
12/10/2024	<u>37</u>	ORDER PROVIDING NOTICE OF SATISFACTION OF FILING FEE - The Court's records reflect that the plaintiff has paid the full district court filing fee in this action. "In

		no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action..." 28 U.S.C. § 1915(b)(3). Accordingly, any collection order issued pursuant to 28 U.S.C. § 1915(b) to collect the district court filing fee has been satisfied and no further payments associated with this filing fee shall be made, § 1915(b)(3). Pursuant to § 1915(b)(3), the Clerk is required to issue a refund to the plaintiff for any overpayments made. Id. A copy of this Notice shall be distributed to the plaintiff's custodian. Copies sent per Distribution List. Signed by District Judge Matthew P. Brookman on 12/10/2024. (AJG) (Entered: 12/10/2024)
12/11/2024	38	MOTION for Extension of Time to December 20, 2024 <i>to File Motion for Summary Judgment</i> , filed by Defendant P. THOMAS. (Attachments: # 1 Text of Proposed Order) (Jimenez, Gustavo) (Entered: 12/11/2024)
12/18/2024	39	MOTION to Intervene, filed by Plaintiff ANDRE MOTON. (JRB) (Entered: 12/18/2024)
12/20/2024	40	MOTION for Summary Judgment , filed by Defendant P. THOMAS. (Jimenez, Gustavo) (Entered: 12/20/2024)
12/20/2024	41	Designation of Evidence re 40 MOTION for Summary Judgment (<i>in Support</i>), filed by Defendant P. THOMAS. (Attachments: # 1 Exhibit 1 - Declaration of Patrick Thomas, # 2 Exhibit 2 - Conduct Report issued to Plaintiff (MOTONVTHOMAS000067), # 3 Exhibit 3 - Photograph of Plaintiff's left wrist (MOTONVTHOMAS000063), # 4 Exhibit A - Full Deposition Transcript of Plaintiff)(Jimenez, Gustavo) (Entered: 12/20/2024)
12/20/2024	42	BRIEF/MEMORANDUM in Support re 40 MOTION for Summary Judgment , filed by Defendant P. THOMAS. (Jimenez, Gustavo) (Entered: 12/20/2024)
12/20/2024	43	NOTICE <i>Regarding Right to Respond to and Submit Evidence in Opposition to Motion for Summary Judgment</i> , filed by Defendant P. THOMAS, re 40 MOTION for Summary Judgment . (Jimenez, Gustavo) (Entered: 12/20/2024)
12/30/2024	44	RESPONSE in Opposition re 39 MOTION <i>to Intervene</i> , filed by Defendant P. THOMAS. (Jimenez, Gustavo) (Entered: 12/30/2024)
12/31/2024	45	ORDER - Defendant's motion for extension of time, dkt. 38 , is supported by good cause and is granted to the extent that the Court accepts his motion for summary judgment, dkt. 40 , as timely filed. Plaintiff's motion to intervene, dkt. 39 , is granted to the extent that the Court explains that, when he filed his motion, Defendant had not yet filed a summary judgment motion. That motion has now been filed and Defendant's counsel represented in the certificate of service that the motion and supporting documents was mailed to him on December 20, 2024. See dkts. 40-43. IT IS SO ORDERED. Copy to Plaintiff via US mail. Signed by Magistrate Judge Mario Garcia on 12/31/2024. (AJG) (Entered: 12/31/2024)
12/31/2024	46	MOTION to Intervene, filed by Plaintiff ANDRE MOTON. (LF) (Entered: 01/02/2025)
01/03/2025	47	RESPONSE in Opposition re 46 MOTION to Intervene , filed by Defendant P. THOMAS. (Jimenez, Gustavo) (Entered: 01/03/2025)
01/13/2025	48	RESPONSE and Memo in Opposition re 40 MOTION for Summary Judgment , filed by Plaintiff ANDRE MOTON. (Attachments: # 1 Exhibit, # 2 Cover Letter)(LBT) (Entered: 01/14/2025)
01/13/2025	49	DECLARATION in Support of Response in Opposition to Motion re 40 MOTION for Summary Judgment , filed by Plaintiff ANDRE MOTON. (LBT) (Entered: 01/14/2025)
01/13/2025	50	AFFIDAVIT in Support of Response in Opposition to Motion re 40 MOTION for Summary Judgment , filed by Plaintiff ANDRE MOTON. (LBT) (Entered: 01/14/2025)

01/23/2025	<u>51</u>	MOTION for Extension of Time to File Reply to February 8, 2025 re <u>40</u> MOTION for Summary Judgment , filed by Defendant P. THOMAS. (Attachments: # <u>1</u> Text of Proposed Order)(Jimenez, Gustavo) (Entered: 01/23/2025)
02/08/2025	<u>52</u>	REPLY in Support of Motion re <u>40</u> MOTION for Summary Judgment , filed by Defendant P. THOMAS. (Jimenez, Gustavo) (Entered: 02/08/2025)
02/19/2025	<u>53</u>	ORDER - Pending before the Court is Plaintiff's Motion to Intervene, <u>46</u> , and Defendant's Motion for Extension of Time to File Reply in Support of Summary Judgment, <u>51</u> . Because Plaintiff has received the summary judgment materials, <u>47</u> and responded properly, <u>48</u> , the Motion to Intervene, <u>46</u> , is DENIED as moot. Defendant's Motion for Extension of Time, <u>51</u> , is GRANTED and his brief, filed February 8, 2025, is noted as timely. Signed by Magistrate Judge Mario Garcia on 2/19/2025. Copy to Plaintiff via US Mail. (AAS) (Entered: 02/20/2025)
03/10/2025	<u>54</u>	MOTION for Extension of Time to File Surreply re <u>40</u> MOTION for Summary Judgment , filed by Plaintiff ANDRE MOTON. (LBT) (Entered: 03/11/2025)
03/17/2025	<u>55</u>	SURREPLY to <u>40</u> MOTION for Summary Judgment, filed by Plaintiff ANDRE MOTON. (TPS) (Entered: 03/18/2025)
03/21/2025	<u>56</u>	ORDER granting <u>54</u> MOTION for Extension of Time to File a surreply in response to Defendant's pending summary judgment motion. Dkt. <u>40</u> to the limited extent that the Court will accept the surreply in the record as dkt. <u>55</u> as timely filed. This Order does not, however, constitute a finding that the surreply is otherwise proper under Southern District of Indiana Local Rule 56-1(d), which limits summary judgment surreplies to situations where the movant cites new evidence in the reply or objects to the admissibility of evidence cited in the response and, even then, provides that a surreply must be limited to the new evidence and objections. Signed by Magistrate Judge Mario Garcia on 3/21/2025. (Copy to plaintiff via US Mail) (KAA) (Entered: 03/21/2025)
03/26/2025	<u>57</u>	NOTICE to the Court, filed by Plaintiff ANDRE MOTON. (KAA) Modified on 3/28/2025 to edit event from motion to Notice. (MEH). (Entered: 03/27/2025)
04/21/2025	<u>58</u>	Surreply re <u>40</u> MOTION for Summary Judgment , filed by Plaintiff ANDRE MOTON. (AJG) (Entered: 04/22/2025)
08/22/2025	<u>59</u>	ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - Sgt. Thomas's motion for summary judgment is DENIED. Dkt. <u>40</u> . This case will proceed to settlement or trial. The Court prefers that Mr. Moton be represented by counsel for the remainder of this action. The clerk is directed to send Mr. Moton a motion for assistance recruiting counsel with his copy of this Order. Mr. Moton has through 21 days after the entry of this order, to file a motion for counsel using this form motion or to inform the Court that he wishes to proceed pro se. Once the motion has been ruled on and counsel has been recruited, the magistrate judge is asked to schedule a telephonic status conference to discuss further proceedings. The clerk is directed to change the name of Defendant "P. Thomas" to "Patrick Thomas." SEE ORDER. Signed by District Judge Matthew P. Brookman on 8/21/2025. (Copy to plaintiff via US Mail.) (Attachments: # <u>1</u> Motion for Counsel Form) (KAA) (Entered: 08/22/2025)
09/05/2025	<u>60</u>	MOTION to Appoint Counsel, filed by Plaintiff ANDRE MOTON. (SAM) (Entered: 09/05/2025)
09/10/2025	<u>61</u>	ORDER granting <u>60</u> Motion to Appoint Counsel to the extent that the Court will attempt to recruit pro bono counsel to represent Plaintiff through final judgment. Copy sent to plaintiff via US mail. Signed by District Judge Matthew P. Brookman on 9/10/2025. (TPS) (Entered: 09/10/2025)

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