# \*\*\* PUBLIC DOCKET \*\*\*

# U.S. District Court Southern District of Indiana (Indianapolis) CIVIL DOCKET FOR CASE #: 1:23-cv-01533-JMS-KMB

MOTON v. SURGUY et al

Assigned to: Judge Jane Magnus-Stinson Referred to: Magistrate Judge Kellie M. Barr

Cause: 42:1983 Prisoner Civil Rights

Date Filed: 08/23/2023 Jury Demand: Both

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**

**JACK SURGUY** 

## represented by Abigail Davis

Office of Indiana Attorney General 302 W Washington St. Indianapolis, IN 46204 765-639-5695 Email: abigail.davis@atg.in.gov

ATTORNEY TO BE NOTICED

#### **David Matthew Price**

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**Defendant CLINT BROWN** 

# represented by Abigail Davis

(See above for address)

ATTORNEY TO BE NOTICED

**David Matthew Price** 

(See above for address)

ATTORNEY TO BE NOTICED

**Emily Hoegler** 

(See above for address)

ATTORNEY TO BE NOTICED

<b>Date Filed</b>	#	Docket Text
08/23/2023	1	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: 08/28/2023)
08/23/2023	2	COMPLAINT against BROWN, J. SURGAY, filed by ANDRE MOTON. (No fee paid with this filing) (DJH) (Entered: 08/28/2023)
08/23/2023	3	MOTION for Leave to Proceed in forma pauperis, filed by Plaintiff ANDRE MOTON. (Attachments: # 1 Resident Activity Report)(DJH) (Entered: 08/28/2023)
08/28/2023	4	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (DJH) (Entered: 08/28/2023)
08/28/2023	<u>5</u>	Notice to File Rule 7.1 Disclosure Statement. (RAGS) (DJH) (Entered: 08/28/2023)
08/29/2023	6	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: 08/29/2023)
09/21/2023	7	ORDER on Motion to Proceed In Forma Pauperis - 3 Motion for Leave to Proceed in forma pauperis is GRANTED to the extent that the plaintiff is assessed an initial partial filing fee of Six Dollars and Eighty-Four Cents (\$6.84). See 28 U.S.C. § 1915(b)(1). The plaintiff shall have through October 20, 2023, in which to pay this sum to the clerk of the district court. See Order for details. Signed by Judge Jane Magnus-Stinson on 9/21/2023. (LBT) (Entered: 09/21/2023)
09/27/2023	8	EXHIBITS re 2 Complaint by ANDRE MOTON. (JSR) (Entered: 09/27/2023)
10/17/2023	9	EXHIBIT by ANDRE MOTON. (CW) (Entered: 10/18/2023)
10/26/2023	10	MOTION to Waive Partial Filing Fee, filed by Plaintiff ANDRE MOTON. (JSR) (Entered: 10/26/2023)

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10/29/2023	11	ORDER - Plaintiff Andre Moton has filed a motion to waive his partial filing fee in several cases due to checks being returned for not having a case number on them despite his request to the business office to include them. Dkt. 10. The motion, dkt. 10, is granted to the extent that the Court will issue a collection order by separate order to facilitate collection of the filing fee. Mr. Moton's complaint will be screened in due course. Signed by Magistrate Judge Kellie M. Barr on 10/29/2023. (JRB) Modified on 10/31/2023 - Updated filed date (JSR). (Entered: 10/30/2023)
10/29/2023	12	ORDER Directing Monthly Payments be made from Prison Account of Andre Moton - Plaintiff's custodian is directed to withhold sums from the inmate trust account of ANDRE MOTON, 231926, and to forward such sums to the Clerk of this Court at 46 East Ohio Street, Room 105, Indianapolis, Indiana 46204, consistent with paragraph 2 of this Entry. The appropriate cause number, 1:23-CV-01533-JMS-KMB, should be placed on each payment sent to the Clerk. Checks must be issued for a single plaintiff and include the case number or numbers to which the payment should be applied. Copy sent to distribution list via US Mail. Signed by Magistrate Judge Kellie M. Barr on 10/29/2023.(JRB) Modified on 10/31/2023 - Updated filed and signed dates (JSR). (Entered: 10/30/2023)
12/15/2023	13	Order Screening Complaint and Directing Further Proceedings - The clerk is directed pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to defendants Officer J. Surguy and Caseworker Brown. Process shall consist of the complaint, dkt. 2, 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 Indiana Department of Correction employees electronically and to update the spelling of the defendant's last name from "Surgay" to "Surguy." Nothing in this Order prohibits the filing of a proper motion pursuant to Rule 12 of the Federal Rules of Civil Procedure. SEE ORDER. Signed by Judge Jane Magnus-Stinson on 12/15/2023.(JRB) (Entered: 12/15/2023)
12/15/2023	14	NOTICE of Lawsuit & Waiver Issued by Clerk as to J. Surguy and Caseworker Brown. (JRB) (Main Document 14 replaced on 12/18/2023) (JRB). (Entered: 12/15/2023)
12/15/2023	<u>15</u>	***PLEASE DISREGARD. CORRECTED BY 16 *** Documents to be Sent via Electronic Notice - re 13 Order, 14 NOTICE of Lawsuit & Waiver Issued by Clerk, 2 Complaint Electronic Notice to IDOC. (JRB) Modified on 12/18/2023 (JRB). (Entered: 12/15/2023)
12/15/2023	<u>16</u>	Documents to be Sent via Electronic Notice - re 14 NOTICE of Lawsuit & Waiver Issued by Clerk, 2 Complaint, 15 Documents to be Sent via Electronic Notice Electronic Notice to IDOC. (JRB) (Entered: 12/18/2023)
01/16/2024	<u>17</u>	NOTICE of Appearance by John Oosterhoff on behalf of Defendants BROWN, J. SURGUY. (Oosterhoff, John) (Entered: 01/16/2024)
01/16/2024	18	WAIVER OF SERVICE Returned Executed, filed by BROWN, J. SURGUY. BROWN waiver sent on 12/15/2023; J. SURGUY waiver sent on 12/15/2023. (Oosterhoff, John) (Entered: 01/16/2024)
01/16/2024	<u>19</u>	NOTICE of Appearance by James Michael Sedam on behalf of Defendants BROWN, J. SURGUY. (Sedam, James) (Entered: 01/16/2024)
02/20/2024	20	MOTION for Leave to File <i>Belated Answer to Plaintiff's Complaint</i> , filed by Defendants BROWN, J. SURGUY. (Attachments: # 1 Text of Proposed Order Proposed Order Granting Leave to File Belated Answer)(Oosterhoff, John) (Entered: 02/20/2024)
02/20/2024	21	Defendants' ANSWER to 2 Complaint, Affirmative Defenses and Demand for Jury Trial, filed by BROWN, J. SURGUY. (Oosterhoff, John) (Entered: 02/20/2024)

22	ORDER granting 20 Motion for Leave to File Belated Answer. The answer at dkt. 21 is deemed properly filed. The Clerk is directed to update the docket to reflect the defendants' names are Jack Surguy and Clint Brown. Signed by Magistrate Judge Kellie M. Barr on 2/21/2024. (LBT) (Entered: 02/21/2024)
23	ENTRY Directing Development of Exhaustion Defense and Issuing Partial Stay - The exhaustion defense will be resolved pursuant to the following schedule. The defendants shall have through April 3, 2024, in which to either: file a dispositive motion in support of the exhaustion defense (including the Notice required by Local Rule 56-1(k)); file a notice with the Court specifically identifying the fact issue(s) that preclude resolution of this affirmative defense via a dispositive motion and requesting a Pavey hearing; or file a notice with the Court withdrawing the exhaustion defense. If a dispositive motion is filed, the plaintiff shall have twenty-eight (28) days in which to respond. The movant shall then have fourteen (14) days in which to reply. Except for activities associated with the development and resolution of the affirmative defense that the plaintiff failed to exhaust his administrative remedies prior to filing this action, or any other matter directed by the Court, any other activities or deadlines in the action are stayed. Discovery on the issue of exhaustion is permitted and shall be completed prior to the resolution of the motion for summary judgment. No discovery shall be permitted after a ruling on the motion for summary judgment absent good cause. See Entry for details. Signed by Magistrate Judge Kellie M. Barr on 2/21/2024.(LBT) (Entered: 02/21/2024)
24	NOTICE of Appearance by Jonathan Freije on behalf of Defendants CLINT BROWN, JACK SURGUY. (Freije, Jonathan) (Entered: 03/12/2024)
<u>25</u>	Motion to Withdrawal of Appearance by <i>John R. Oosterhoff</i> on behalf of CLINT BROWN, JACK SURGUY (Attachments: # 1 Text of Proposed Order On Motion to Withdraw Appearance) (Sedam, James) Modified on 3/12/2024 (MRI). (Entered: 03/12/2024)
<u>26</u>	ORDER granting <u>25</u> Motion to Withdraw Attorney Appearance. Attorney John Oosterhoff withdrawn. Signed by Magistrate Judge Kellie M. Barr on 3/13/2024. (SWM) (Entered: 03/14/2024)
27	First MOTION for Extension of Time to 05/03/2024 to File Dispositive Motion, filed by Defendants CLINT BROWN, JACK SURGUY. (Attachments: # 1 Text of Proposed Order Proposed Order on MEOT)(Sedam, James) (Entered: 04/02/2024)
28	ORDER GRANTING MOTION FOR EXTENSION OF TIME: Defendants' motion for extension of time, dkt. 27, is granted. On or before May 3, 2024, Defendants shall either: SEE ORDER. Signed by Magistrate Judge Kellie M. Barr on 4/4/2024. (LF) (Entered: 04/05/2024)
<u>29</u>	NOTICE of Substitution of Appearance by Hannah Lynette Hulsey replacing <i>James M. Sedam</i> on behalf of CLINT BROWN, JACK SURGUY (Hulsey, Hannah) (Entered: 04/25/2024)
30	NOTICE DEFENDANTS NOTICE OF WITHDRAWAL OF EXHAUSTION DEFENSE, filed by Defendants CLINT BROWN, JACK SURGUY (Freije, Jonathan) (Entered: 05/01/2024)
31	ORDER SETTING PRETRIAL SCHEDULE AND DISCUSSING DISCOVERY IN PRISONER LITIGATION: Defendants have withdrawn the exhaustion defense. Dkt. 30. 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 12/2/2024. Discovery due
	23 24 25 26 27 28 29

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	by 11/4/2024. Signed by Magistrate Judge Kellie M. Barr on 5/3/2024. (JSR) (Entered: 05/03/2024)
32	ORDER to Make Inmate Available via Telephone - Warden of Pendleton Correctional Facility ordered to make ANDRE MOTON available via telephone for court proceeding on 7/22/2024 at 1:00 p.m. (Eastern). (See Order.) Signed by Magistrate Judge Kellie M. Barr on 5/3/2024. (JSR) (Entered: 05/03/2024)
33	ORDER SETTING INITIAL DISCOVERY CONFERENCE - A Telephonic Initial Discovery Conference is set for 7/22/2024 at 1:00 PM (Eastern Time) before Magistrate Judge Kellie M. Barr. The Court will contact counsel through the Court's electronic filing system with the call-in information to be used to participate in this conference. (See Order.) Signed by Magistrate Judge Kellie M. Barr on 5/3/2024. (JSR) (Entered: 05/03/2024)
34	NOTICE of Service of Initial Disclosures, filed by Defendants CLINT BROWN, JACK SURGUY. (Freije, Jonathan) (Entered: 07/01/2024)
36	ORDER RESETTING TELEPHONIC DISCOVERY CONFERENCE - The Court, on its own motion, RESETS the discovery conference set on July 22, 2024, at 1:00 p.m. for July 26, 2024, at 1:30 p.m. (Eastern), before Magistrate Judge Kellie M. Barr. The Court will contact counsel by separate email with the information needed to participate in the conference. Signed by Magistrate Judge Kellie M. Barr on 7/19/2024.(SWM) (Entered: 07/19/2024)
37	ORDER to Make Inmate Available - via Telephone. Warden of Pendleton Correctional Facility ordered to make ANDRE MOTON Available - via Telephone for court proceeding on 7/26/2024 at 1:30 p.m. Eastern. Copy to Warden via Email. Signed by Magistrate Judge Kellie M. Barr on 7/19/2024.(SWM) (Entered: 07/19/2024)
39	MINUTE ORDER for proceedings held on July 26, 2024 before Magistrate Judge Kellie M. Barr: This matter came before U.S. Magistrate Judge Kellie M. Barr by telephone for an initial discovery conference in this action. Mr. Moton appeared pro se. Defendants Jack Surguy and Clint Brown appeared by counsel Jonathan Freije (Office of the Indiana Attorney General). **SEE ORDER** Signed by Magistrate Judge Kellie M. Barr. (MJL) Modified on 7/30/2024 (MRI). (Entered: 07/30/2024)
40	NOTICE of Service of Initial Disclosures (Supplement), filed by Defendants CLINT BROWN, JACK SURGUY. (Zurschmiede, Jacob) (Entered: 08/02/2024)
<u>42</u>	Submission of Exhibits, filed by Plaintiff ANDRE MOTON. (JSR) (Entered: 08/09/2024)
41	NOTICE of Substitution of Appearance by David Matthew Price replacing <i>Hannah L. Hulsey</i> on behalf of CLINT BROWN, JACK SURGUY (Price, David) (Entered: 08/09/2024)
43	Submission of Documents, filed by Plaintiff ANDRE MOTON. (JRB) (Entered: 08/15/2024)
44	Submission of Exhibits, filed by Plaintiff ANDRE MOTON. (LBT) (Entered: 09/11/2024)
45	NOTICE REGARDING SETTLEMENT CONFERENCE, filed by Defendants CLINT BROWN, JACK SURGUY (Freije, Jonathan) (Entered: 09/30/2024)
46	NOTICE of Change of Address for ANDRE MOTON to New Castle Correctional Facility and Request for Public Docket Sheet. ANDRE MOTON is no longer participating in E-Service. Public Docket Sheet Provided via US Mail. (Attachments: # 1 Public Docket Sheet) (AAS) (Entered: 10/15/2024)
	33 34 36 37 39 40 42 41 43 44 45

11/04/2024	47	MOTION for Extension of Time to January 3, 2025; January 31, 2025 in which to 31 Order Setting Pretrial Schedule and Discussing Discovery in Prisoner Litigation <i>TO EXTEND THE CLOSE OF DISCOVERY AND DISPOSITIVE MOTION DEADLINES</i> , filed by Defendants JACK SURGUY, CLINT BROWN. (Attachments: # 1 Text of Proposed Order ORDER GRANTING MOTION TO EXTEND THE CLOSE OF DISCOVERY AND DISPOSITIVE MOTION DEADLINES)(Freije, Jonathan) (Entered: 11/04/2024)
11/07/2024	48	Submission of Proposed Order, re <u>47</u> MOTION for Extension of Time to January 3, 2025; January 31, 2025 in which to <u>31</u> Order Setting Pretrial Schedule and Discussing Discovery in Prisoner Litigation <i>TO EXTEND THE CLOSE OF DISCOVERY AND DISPOSITIVE MOTION DEADLINES</i> , filed by Defendants JACK SURGUY, CLINT BROWN. (Freije, Jonathan) (Entered: 11/07/2024)
11/07/2024	49	ORDER granting 47 Motion for Extension of Time - Defendants are GRANTED extensions of time up to and including January 3, 2025, to complete discovery and up to and including January 31, 2025, to file a dispositive motion. SEE ORDER. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Kellie M. Barr on 11/7/2024.(JRB) (Entered: 11/07/2024)
11/15/2024	50	RECEIPT #12994 for Partial Filing fee in the amount of \$350.00, paid by ANDRE MOTON. (CCG) (Entered: 11/15/2024)
12/04/2024	<u>51</u>	MOTION to Take Deposition from Andre Moton , filed by Defendants JACK SURGUY, CLINT BROWN. (Attachments: # 1 Text of Proposed Order)(Freije, Jonathan) (Entered: 12/04/2024)
12/04/2024	52	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. 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. SEE ORDER. Signed by District Judge Jane Magnus-Stinson on 12/4/2024. Copies provided per distribution list.(AAS) (Entered: 12/04/2024)
12/18/2024	<u>53</u>	MOTION to Intervene, filed by Plaintiff ANDRE MOTON. (JRB) (Entered: 12/18/2024)
12/30/2024	54	ORDER granting 51 Motion to Take Deposition from Andre Moton, DOC #231926, an inmate held in the custody of the Indiana Department of Correction at New Castle Correctional Facility, prior to the close of discovery, until such time as the deposition is concluded by remote means outside the physical presence of the officer of the court/court reporter for the purposes of swearing in, if necessary, and subject to making reasonable accommodations within New Castle Correctional Facility. Signed by Magistrate Judge Kellie M. Barr on 12/30/2024. (See Order.) Copy mailed to Plaintiff. (BAA) (Entered: 12/30/2024)
12/31/2024	<u>56</u>	MOTION to Intervene, filed by Plaintiff ANDRE MOTON. (Attachments: # 1 Cover Letter)(DWH) (Entered: 01/02/2025)
01/02/2025	<u>55</u>	ORDER - Plaintiff's motion asking the Court to require his prison to give him copies of any summary judgment motions filed in this case, dkt. 53, is denied as unnecessary. No summary judgment motions have been filed in this case. The Clerk is directed to enclose a public docket sheet with Plaintiff's copy of this Order. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Kellie M. Barr on 1/2/2025. (Attachments: # 1 Docket Sheet) (JRB) (Entered: 01/02/2025)

01/03/2025	57	Second MOTION for Extension of Time to 2/28/2025 TO EXTEND THE CLOSE OF DISCOVERY AND DISPOSITIVE MOTION DEADLINES, filed by Defendants JACK SURGUY, CLINT BROWN. (Attachments: # 1 Text of Proposed Order)(Freije, Jonathan) (Entered: 01/03/2025)
01/13/2025	<u>58</u>	ORDER - Defendants, having filed a second motion to extend the discovery and dispositive motion deadlines by 28 days, and the Court, being duly advised in the premises and having considered the motion, now GRANTS that motion. 57 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREEED that Defendants are GRANTED extensions of time up to and including January 31, 2025, to complete discovery and up to and including February 28, 2025, to file a dispositive motion. Plaintiff's pro se Motion to Intervene, which requests that he be sent copies of any summary judgment filings, is DENIED AS MOOT. 56 Defendant has not yet filed summary judgment yet in this case and now has until February 28, 2025 to do so. Copy sent to Plaintiff via US Mail. Signed by Magistrate Judge Kellie M. Barr on 1/10/2025.(JRB) (Entered: 01/13/2025)
01/14/2025	<u>59</u>	NOTICE of Taking Deposition by JACK SURGUY, CLINT BROWN (Freije, Jonathan) (Entered: 01/14/2025)
02/21/2025	60	MOTION for Extension of Time to April 14, 2025 <i>TO EXTEND THE DISPOSITIVE MOTION DEADLINE</i> , filed by Defendants JACK SURGUY, CLINT BROWN. (Attachments: # 1 Text of Proposed Order)(Freije, Jonathan) (Entered: 02/21/2025)
02/24/2025	<u>61</u>	NOTICE of Appearance by Emily Hoegler on behalf of Defendants JACK SURGUY, CLINT BROWN. (Hoegler, Emily) (Entered: 02/24/2025)
02/27/2025	62	ORDER granting 60 Motion for Extension of Time to File - Defendants, by counsel, filed a motion to extend the dispositive motion deadline 45 days. The Court now GRANTS that motion 60. IT IS THEREFORE ORDERED, ADJUDGED. AND DECREED that Defendants are GRANTED an extension of time up to and including April 14, 2025, to file a dispositive motion. Copy to Plaintiff via US mail. Signed by District Judge Jane Magnus-Stinson on 02/27/2025. (AJG) (Entered: 02/27/2025)
05/05/2025	<u>63</u>	MOTION for Case Status, filed by Plaintiff ANDRE MOTON. (JSR) (Entered: 05/06/2025)
05/07/2025	<u>64</u>	NOTICE of Substitution of Appearance by Abigail Davis replacing <i>Jonathan Freije</i> on behalf of CLINT BROWN, JACK SURGUY (Davis, Abigail) (Entered: 05/07/2025)
05/12/2025	65	ORDER: Plaintiff's motion for status update, dkt. <u>63</u> , is granted to the extent that the Court explains as follows: The summary judgment deadline has passed, and Defendants did not move for summary judgment. Thus, this case will be resolved by either settlement or trial. Given this, the Court will give Plaintiff the opportunity to request that counsel represent him at this next phase of the proceedings. The Court will send Plaintiff a blank form motion for assistance with recruiting counsel. He has 21 days from the entering of this Order to file a motion for counsel or to inform the Court that he wishes to proceed pro se and keep representing himself. The Clerk is directed to enclose the following with Plaintiff's copy of this Order: (1) public docket sheet; and (2) blank motion for assistance with recruiting counsel. Signed by Magistrate Judge Kellie M. Barr on 5/12/2025.(Copy mailed to Plaintiff.) (Attachments: # <u>1</u> Public Docket sheet, # <u>2</u> Blank Counsel form) (LF) (Entered: 05/13/2025)
05/27/2025	<u>66</u>	MOTION for Assistance with Recruiting Counsel, filed by Plaintiff ANDRE MOTON. (LBT) (Entered: 05/28/2025)
06/13/2025	67	ORDER GRANTING MOTION FOR ASSISTANCE RECRUITING COUNSEL - Plaintiff's motion for assistance with recruiting counsel, dkt. 66, is GRANTED to the extent that the Court will attempt to recruit pro bono counsel to represent Plaintiff through

(KAA). (Entered: 06/13/2025)		final judgment. Signed by Magistrate Judge Kellie M. Barr on 6/13/2025. (Copy to plaintiff via US Mail.) (KAA) Modified on 6/17/2025 to correct signing judge name (KAA). (Entered: 06/13/2025)
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# Case #: 1:23-cv-01533-JMS-KMB