

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

M. PETER KUCK <i>Plaintiff</i>	:	CIVIL ACTION NO. 3:07cv1390(VLB)
	:	
v.	:	
	:	
JOHN A. DANAHER, III, et al. <i>Defendants</i>	:	June 4, 2010
	:	

JOINT STATUS REPORT

On March 23, 2010, the United States Court of Appeals for the Second Circuit reversed a decision of the trial court dismissing this matter under F.R.C.P. 12(b)(6) and remanding the case back to the trial court. In order to facilitate further proceedings in this matter, the parties file this joint status report pursuant to F.R.C.P. 16(c). Each of the numbered paragraphs below corresponds to the similarly numbered sub-sections of F.R.C.P. 16(c).

1. Issues upon remand. Dismissal of plaintiff's First Amendment and substantive due process claims was upheld by the Court of Appeals and therefore the sole remaining issue relates to his procedural due process claim. As noted in the decision of the Second Circuit, "[i]t remains to be seen . . . whether Kuck has named an appropriate defendant for this case as an individual damages suit or a putative class-action." The Second Circuit did not reach the issues of plaintiff's motions to join or amend or the defendants various defenses and therefore remanded the matter back to this court to "consider the merit, vel non, of these motions."

2. Amendments to the Complaint. The Second Circuit has directed this court to consider the plaintiff's motions to join and amend. Defendants oppose for the reasons outlined in defendants' oppositions to these motions on file with the Court.

The plaintiff's position is that the twenty-two month passage of time since dismissal of the complain warrants consideration of motions to amend and join in the context of a supplemental complaint alleging events since July 25, 2008, including the post-dismissal return of plaintiff's state permit that was submitted by the defendants to the Second Circuit for consideration and referenced in the Second Circuit's decision. In addition, the U.S. Supreme Court heard oral argument in the matter of McDonald v. City of Chicago on March 2, 2010, a case which may decide whether the Second Amendment is applicable to the states as alleged in plaintiff's complaint. For these reasons, supplementing the complaint to include events beyond July 25, 2008, will be efficient as will waiting for guidance from the U.S. Supreme Court to determine the standard, if any, for considering plaintiff' Second Amendment due process claims.

Defendants are unaware of any authority for considering a motion to dismiss one complaint by relying on matters pled in another, later complaint and therefore believe that the court should consider the various motions before it in the order in which they were filed and briefed.

Defendants have no objection to the court's taking judicial notice of the fact

that plaintiff's state permit was returned particularly because that was raised before the Court of Appeals.

3. N/A

4. N/A

5. Summary Judgment. Summary judgment motions under Rule 56 may be relevant and appropriate depending on the District Court's adjudication of the issues raised by the pending motions.

6. Discovery. There does not appear to be any need for further discovery on the motions actually pending before the trial court. The defendants' position is that further discovery may be needed to resolve the issues remanded by the Second Circuit if the plaintiff prevails on the pending motions. The plaintiff's position is that discovery is necessary to address the appellate court's statement that it remains to be seen whether plaintiff has named an appropriate defendant for the case to proceed. The plaintiff has served notices of deposition for the named defendants to address this issue. Further discovery may well be appropriate if this case proceeds to motions under Rule 56.

7. N/A

8. Referrals. For purposes of the remand order, it appears to the defendants that the pending motions should be adjudicated by the trial court. The plaintiff's position is that the appellate court finding that plaintiff states a claim for a procedural due process violation makes this claim ready for discovery especially in consideration of the appellate court's position that

plaintiff needs to identify an appropriate defendant. If matters proceed to summary judgment under Rule 56 or otherwise, the defendants have no objection to referring the case to a magistrate judge.

9. Settlement. The defendants have no objection to settlement discussions.

10. Not applicable at this time.

11. Disposition of Pending Motions. The defendants' position is that, as directed by the remand order, the primary issues before the trial court are the disposition of the pending motions. Depending on the trial court's decision on this motion, there are several other pending motions for the court's consideration.

12. Special Procedures. The plaintiff's position is that a supplemental complaint is warranted by the passage of time and intervening events and that discovery is necessary to address the appellate court's reference to an appropriate defendant. The defendants do not believe that any special procedures are required.

13. N/A

14. N/A

15. N/A

16. Other Matters. The defendants' position is that adjudication of the various pending motions would materially aid further progress in this case. The defendants are prepared to rely on the pleadings already on file before the trial court but are willing to submit other memoranda of law as required.

The plaintiff's position is that a consideration of motions to amend and

join parties dated March 3, 2008, as regards a complaint dated September 17, 2007, followed by a consideration of a supplemental complaint is not efficient, when a supplemental complaint filed by plaintiff would take into account events occurring after July 25, 2008, that even the defendants thought were important to bring to the Second Circuit's attention during the appeal and which the Second Circuit referenced in its decision.

As noted above, defendants do not object to the trial court's taking judicial notice of facts raised before the Court of Appeals. However, as directed by the remand order, the trial court is required to review and consider the dismissal of the initial complaint on the basis of the complaint itself. Defendants are aware of no authority permitting the court to simply assume the validity of a supplemental complaint that is subject to a timely filed objection. If it pleases the court, the parties agree to a telephone conference with the court at a time of the court's discretion.

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CERTIFICATION

I hereby certify that on June 4, 2010, a true and accurate copy of the foregoing Joint Status Report was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.

/s/ Robert Snook

Robert Snook
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