

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KEITH ROGERS, JAMES HILL, and)	
WANDA HOLLINS,)	
Plaintiffs,)	15-cv-11632
)	
vs.)	Honorable Judge
)	Edmond E. Chang
SHERIFF OF COOK COUNTY)	
and COOK COUNTY, ILLINOIS,)	
)	
Defendants.)	

**DEFENDANT COOK COUNTY'S ANSWER
TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

NOW COMES the Defendant, COOK COUNTY ("Defendant"), by its attorney, KIMBERLY M. FOXX, State's Attorney of Cook County, through her assistant, LYLE K. HENRETTY, and in answer to Plaintiffs' Second Amended Complaint, states as follows:

1. This is a civil action arising under Section 202 of the Americans with Disabilities Act, 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), and 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 12133, 29 U.S.C. § 794a(a)(2), 28 U.S.C. § 1343.

ANSWER: Defendant admits that Plaintiffs purport to bring this civil action under Section 202 of the Americans with Disabilities Act, 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), and 42 U.S.C. § 1983. Defendant denies that Plaintiffs are entitled to any relief sought herein. Defendant admits this Court has jurisdiction.

2. Plaintiffs Keith Rogers, James Hill, and Wanda Hollins are residents of the Northern District of Illinois. At all times relevant, each plaintiff was participating in a program that included “opioid agonist therapy,” also known as “medication-assisted treatment,” that involved treatment with methadone or buprenorphine.

ANSWER: Defendant lacks knowledge with which to form a belief as to the truth of the allegations set forth in the first sentence of this paragraph. Defendant admits that Keith Rogers, James Hill, and Wanda Hollins each participated in the opioid treatment program (“OTP”) during their respective incarcerations at the Cook County Jail, that their treatment involved methadone or buprenorphine, and that such treatment is also known as “medication-assisted treatment.” Defendants deny the remaining allegations set forth in Paragraph 2.

3. Each plaintiff is a “qualified individual with a disability” under Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131- 34 either because the plaintiff has a current or past history of an opioid use disorder that substantially limits a major life activity, or because the plaintiff is regarded as having a disabling impairment because of participation in an “opioid agonist therapy” program.

ANSWER: Defendant lacks knowledge with which to form a belief as to the truth of the allegations set forth in this paragraph.

4. Defendant Thomas Dart is the Sheriff of Cook County. Plaintiff sues Dart in his official capacity.

ANSWER: Admitted

5. At all times relevant, the Sheriff has received federal funds for use at the Jail.

ANSWER: Admitted.

6. Defendant Cook County is responsible, in collaboration with defendant Sheriff, for providing medical services to detainees at the Cook County Jail.

ANSWER: Admitted.

7. At all times relevant, Cook County has received federal funds for use at the Jail.

ANSWER: Admitted.

8. Defendant Cook County is also joined in this action pursuant to *Carver v. Sheriff of LaSalle County*, 324 F. 3d 947 (7th Cir. 2003).

ANSWER: Defendant denies that it is a necessary party to this litigation pursuant to *Carver v. Sheriff of LaSalle County*, 324 F.3d 947 (7th Cir. 2003).

9. As explained below with greater specificity, plaintiffs bring this action individually and for a proposed class to challenge the refusal of defendants to permit detainees at the Jail to continue participation in “opioid agonist therapy.”

ANSWER: Defendant admits that the Plaintiffs purport to bring this action individually and for a proposed class to challenge the refusal of defendants to permit detainees at the Jail to continue participation in “opioid agonist therapy,” but denies any and all alleged wrongdoing, and denies that Plaintiffs are entitled to any relief sought herein.

10. “Opioid agonist therapy” is a safe and widely accepted strategy for treating opioid use disorders. Individuals who participate in “opioid agonist therapy” receive FDA-approved medication, often in combination with behavioral health and other social services, to treat opioid dependence. There is broad agreement in the medical and scientific communities that “opioid agonist therapy” successfully reduces illegal opioid use and enables participants to lead more productive, and healthier lives.

ANSWER: Denied.

11. Despite the broad support for “opioid agonist therapy” among medical and substance use experts, individuals participating in “opioid agonist therapy” are often subjected to public stigma. This stigma arises, in part, from common misunderstandings about “opioid agonist therapy”. For instance, it is sometimes believed that taking methadone or buprenorphine (or buprenorphine combination products, like Suboxone) simply “replaces one addiction with another.” In fact, when methadone and buprenorphine are used as prescribed, they do not produce a “high,” and instead block the euphoric effects of illegal opiates. Another frequent misperception is that individuals should use “opioid agonist therapy” only as a tool to transition from opioid dependence to opioid abstinence. This misperception is contrary the evidence showing that “opioid agonist therapy” is the most effective treatment for opioid addiction.

ANSWER: Defendant lacks knowledge with which to form a belief as to the truth of the allegations set forth in this paragraph. Answering further, Defendant denies that any of its policies and practices are based on “misperception” or on the specific allegations set forth in this paragraph.

12. At all times relevant, defendants have relied on these common misunderstandings in applying a “tapering policy” for detainees who enter the Jail while participating in “opioid agonist therapy.” Defendants’ tapering policy requires the Jail to reduce the dosage of “opioid agonist therapy” for each non-pregnant detainee who enters the Jail. Tapering means that the Jail will reduce the amount of medication provided for a detainee’s “opioid agonist therapy” each day until the dosage is zero.

ANSWER: Denied.

13. Defendants’ tapering policy causes gratuitous physical pain and psychological discomfort and leaves the detainee less likely to restart treatment after leaving custody.

ANSWER: Denied.

14. Defendants have sought to justify their tapering policy on the assertion that the mission of Cermak Health Services does not include “opioid agonist therapy.” This assertion is not based on any data but is an irrational belief.

ANSWER: Denied.

15. Contrary to defendants’ irrational belief, the standard of care is that detainees who enter a jail while enrolled in “opioid agonist therapy” and who will be confined for relatively short periods of incarceration should be continued on that treatment to facilitate reentry and return to treatment in the community.

ANSWER: Denied.

16. About 35% of the arrestees who enter the Jail while enrolled in “opioid agonist therapy” will leave the Jail in 21 days or less. Defendants do not have a reasonable basis to prevent this group of detainees from continuing “opioid agonist therapy.”

ANSWER: Defendants lack knowledge with which to form a belief as to the

truth of the first sentence of this paragraph. Defendants deny the remaining allegations of this paragraph.

17. Plaintiff Rogers was arrested on January 19, 2014 and entered the Cook County Jail on January 20, 2014. He was released February 16, 2014.

ANSWER: Defendant lacks knowledge with which to form a belief regarding the date of Plaintiff's arrest but admits the remaining allegations set forth in this paragraph.

18. While being processed into the Jail, plaintiff Rogers informed intake personnel that he enrolled in an "opioid agonist therapy" program in which he received daily treatment of methadone, buprenorphine, or naltrexone.

ANSWER: Defendant lacks knowledge with which to form a belief as to the truth of the allegations in this paragraph.

19. Jail personnel did not provide plaintiff Rogers with opioid agonist therapy until January 26, 2014.

ANSWER: Defendant admits that Plaintiff Rogers received his first dose of methadone on January 26, 2014. Defendant denies the remaining allegations set forth in this paragraph.

20. Plaintiff Rogers underwent extremely painful withdrawal until he began to receive his prescribed methadone; thereafter, Rogers experienced gratuitous pain because of the tapering policy described above.

ANSWER: Defendant lacks knowledge as to Plaintiff's subjective pain. Defendant denies the remaining allegations set forth in this paragraph.

21. Plaintiff Hill entered the Cook County Jail on December 23, 2013. He was released on December 31, 2013.

ANSWER: Admitted.

22. While being processed into the Jail, plaintiff Hill informed intake personnel that he was enrolled in an “opioid agonist therapy” program in which he received daily treatment of methadone, buprenorphine, or naltrexone.

ANSWER: Defendant lacks knowledge with which to form a belief as to the truth of the allegations in this paragraph.

23. Jail personnel did not provide plaintiff Hill with opioid agonist therapy until December 25, 2013.

ANSWER: Defendant admits that Hill received his first dose of methadone on December 25, 2013. Defendant denies the remaining allegations set forth in this paragraph.

24. Plaintiff Hill underwent extremely painful withdrawal until he began to receive his prescribed methadone; thereafter, Hill experienced gratuitous pain because of the tapering policy described above.

ANSWER: Defendant lacks knowledge as to Plaintiff's subjective pain. Defendant denies the remaining allegations set forth in this paragraph.

25. Plaintiff Hollins entered the Cook County Jail on September 12, 2013. She was released on October 5, 2013.

ANSWER: Admitted.

26. While being processed into the Jail, plaintiff Hollins informed intake personnel that she was enrolled in an “opioid agonist therapy” program in which she received

daily treatment of methadone, buprenorphine, or naltrexone.

ANSWER: Defendant lacks knowledge with which to form a belief as to the truth of the allegations in this paragraph.

27. Jail personnel did not provide plaintiff Hollins with opioid agonist therapy until September 20, 2013.

ANSWER: Denied.

28. Plaintiff Hollins underwent extremely painful withdrawal until she began to receive his prescribed methadone; thereafter, Hollins experienced gratuitous pain because of the tapering policy described above.

ANSWER: Defendant lacks knowledge as to Plaintiff's subjective pain.

Defendant denies the remaining allegations set forth in this paragraph.

29. At all times relevant, there was a widespread practice or custom at the Jail of inordinate delay in continuing opioid agonist therapy to detainees. This claim is at issue for a class in *Parish v. Sheriff*, N.D.Ill., No. 07-cv-4369. Each plaintiff opts out of the Parish class by prosecuting this action.

ANSWER: Denied.

30. Methadone has a "half-life" of about one day. This means that a person regularly taking methadone will begin withdrawal symptoms after one day without the drug; three days without methadone will be an extremely painful period of "cold turkey" withdrawal.

ANSWER: Denied.

31. Defendants have known since the decisions of the Seventh Circuit in *Foelker v. Outagamie County*, 394 F.3d 510 (7th Cir. 2005) and *Davis v. Carter*, 452 F.3d 686 (7th

Cir. 2006) that a widespread practice or custom of inordinate delay in continuing opioid agonist therapy to detainees at the Jail causes gratuitous pain and is unconstitutional.

ANSWER: Defendant denies that it has a widespread practice or custom of inordinate delay in continuing opioid agonist therapy to detainees at the Jail. Answering further, *Foelker* and *Davis* speak for themselves, and the allegations set forth in this paragraph are denied to the extent they mischaracterize *Foelker* or *Davis*.

32. Data provided in this case shows that 94 of 185 incoming detainees waited more than two day before continuing opioid agonist therapy.

ANSWER: Defendants lack knowledge with which to form a belief as to the truth of the allegations in this paragraph.

33. At all times relevant, defendants have turned a blind eye to the injuries caused by their widespread practice or custom of inordinate delay in continuing opioid agonist therapy to detainees at the Jail.

ANSWER: Denied.

34. Each named plaintiff suffered severe and gratuitous pain as a result of defendants' widespread practice of delay in continuing opioid against therapy.

ANSWER: Defendant lacks knowledge as to Plaintiffs' subjective pain. Defendant denies the remaining allegations set forth in this paragraph.

35. The application of defendants' widespread practice of delay in continuing opioid agonist therapy violates the Americans with Disabilities Act, the Rehabilitation Act, and the United State Constitution.

ANSWER: Denied.

36. Defendants apply their tapering policy, discussed above, to all non-pregnant detainees who enter the Jail while participating in opioid agonist therapy.

ANSWER: Denied.

37. Each plaintiff experienced painful withdrawal symptom, including anxiety, chills, muscle pain (myalgia) and weakness, tremor, lethargy and drowsiness, restlessness and irritability, nausea and vomiting and diarrhea.

ANSWER: Defendant lacks knowledge as to Plaintiffs' subjective pain.

Defendant denies the remaining allegations set forth in this paragraph.

38. These symptoms are shared by numerous other detainees who entered the Jail while participating in opioid agonist therapy and who are subjected to defendants' tapering policy.

ANSWER: Denied.

39. Defendants have known at all times relevant that their tapering policy causes gratuitous harm and interferes with safe and effective treatment.

ANSWER: Denied.

40. The data available to plaintiffs show that 197 persons participated in opioid agonist therapy at the Jail in the 103-day period between September 20, 2013 and January 1, 2014. At least 144 of these 197 persons were released from the Jail and returned home during the tapering period.

ANSWER: Defendant lacks knowledge with which to form a belief as to the truth of the allegations in this paragraph.

41. The application of defendants' tapering policy violates the Americans with

Disabilities Act, the Rehabilitation Act, and the United States Constitution.

ANSWER: Denied.

42. Plaintiffs seek to prosecute this case for the following class:

All persons who entered the Cook County Jail on and after December 23, 2013 who were lawfully taking an opioid antagonist, as defined in 42 C.F.R. 8.12(h)(2), who were not then on parole or held on a warrant from another jurisdiction, and who were not pregnant.

ANSWER: Defendant denies that this, or any, class should be certified.

43. Plaintiffs will show in a separate motion for class certification that the proposed class meets each of the requirements of Rule 23(a) and that class certification is appropriate under Rule 23(b)(3).

ANSWER: Denied.

44. Plaintiffs hereby demands trial by jury.

ANSWER: Defendant also demands trial by jury.

AFFIRMATIVE DEFENSES

Defendant offers the following affirmative defenses to Plaintiff's allegations:

1. Cook County, as a municipality, is immune from punitive damage awards. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 101 S. Ct. 2748 (1981).

Defendants reserve the right to name affirmative defenses as they become known through further discovery or otherwise in this action.

JURY DEMAND

With regard to any issue that may be appropriately heard by a jury in this cause of action, the Defendants hereby demand a jury trial.

WHEREFORE, Defendant, COOK COUNTY, denies that Plaintiffs are entitled to compensatory damages in any amount whatsoever, and requests judgment in its favor and against Plaintiffs, plus costs, and any additional relief this Court deems reasonable and just.

Dated: May 3, 2019

Respectfully Submitted,
KIMBERLY M. FOXX
State's Attorney of Cook County

By: /s/ Lyle K. Henretty
Lyle K. Henretty
Assistant State's Attorney
Conflicts Counsel Unit
69 West Washington, Ste. 2030
Chicago, Illinois 60602
(312) 603-1424
lyle.henretty@cookcountylil.gov
For Defendant Cook County

CERTIFICATE OF SERVICE

I, Lyle K. Henretty, hereby certify that, in accordance with Fed. R. Civ. P. 5. and LR 5.5 and the General Order on Electronic Case Filing (ECF), the above document was served pursuant to the District Court's ECF system to those who have entered appearances on the service list on May 3, 2019.

/s/ Lyle K. Henretty
Lyle Henretty