

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

DEMETRIUS WHITNEY,)	
)	
<i>Plaintiff,</i>)	Case No. 18-cv-4475
)	
-vs-)	Honorable Matthew F. Kennelly
)	
FAUZIA KHAN, THOMAS DART,)	
Sheriff of Cook County, and)	
COOK COUNTY, ILLINOIS)	
)	
<i>Defendants.</i>)	

**DEFENDANTS’ MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION
TO PLAINTIFF’S PARTIAL MOTION FOR SUMMARY JUDGMENT**

Defendants Thomas Dart, Sheriff of Cook County and Cook County (collectively “Defendants”), by and through their attorney Kimberly M. Foxx, State’s Attorney of Cook County, through her Special Assistant State’s Attorneys Johnson & Bell, Ltd., respectfully move for leave to file a Sur-Reply in Opposition to Plaintiff’s Partial Motion for Summary Judgment. In support of their motion, Defendants state as follows:

1. On August 10, 2020, Plaintiff filed a Reply in Support of his Motion for Partial Summary Judgment brought on behalf of the oral surgery sub-class. [Dkt. #249].
2. In the original Memorandum filed in Support of Plaintiff’s Motion for Partial Summary Judgment and in the Reply brief, Plaintiff asked this Court for the following relief: “that [it] grant summary judgment as to liability for the policy or common practice of extended delay in scheduling oral surgery for detainees referred to the Stroger Hospital Oral Surgery Clinic by the RTU dentist.” [Dkt. #182, pp.12; Dkt. #249, pp. 14].
3. For the first time in the Reply, Plaintiff asks that this Court grant summary judgment as to liability for the policy associated with scheduling HSRFs by dental assistants. [Dkt.

#249, pp. 5]. Plaintiff contends that Defendants essentially waived this argument, by not offering any evidence or argument to the contrary in their response. *Id.*

4. Plaintiff never developed an argument on the topic that would necessitate a response. The only mention of the HSRF scheduling policy in Plaintiff's opening Memorandum is limited to two facts, PSOF ¶¶51-52 which appear to be provided as context before the legal standard is outlined. [Dkt. #182, pp. 2]. In fact, the argument portion of the Memorandum is completely devoid of any legal argument that this policy is unconstitutional, or that summary judgment should be granted on this basis.

5. Additionally, in the Motion for Partial Summary Judgment, Plaintiff explicitly stated that he did not have enough information to move on the issue that he now requests judgment on:

At this juncture, the original class – inmates who waited at least 14 days for an evaluation by the RTU dentist following the processing of a health service request form as “urgent” – is unable to move for summary judgment because several documents and depositions – namely medical providers and the Rule 30(b)(6) designee – are not complete and the defendants are unable to schedule these depositions due to the coronavirus national emergency.

[Dkt. #180, pp.1].

6. Should this Honorable Court consider the new request for relief related to the policy to delegate scheduling to dental assistants, presented for the first time by Plaintiff in the Reply, then Defendants respectfully request an opportunity to address this argument in a Sur-Reply.

WHEREFORE, Defendants Thomas Dart, Sheriff of Cook County and Cook County respectfully request that this Honorable Court enter an order granting them leave to file their Sur-Reply within 21 days, and for any such other relief this Court deems just and proper.

Respectfully submitted,

KIMBERLY M. FOXX

State's Attorney of Cook County

/s/ Monica Burkoth

Special Assistant State's Attorney

Brian P. Gainer (gainerb@jbltd.com)
Monica Burkoth (burkothm@jbltd.com)
Samuel D. Branum (branums@jbltd.com)
Lisa M. McElroy (mcelroyl@jbltd.com)
JOHNSON & BELL, LTD.
33 West Monroe Street, Suite 2700
Chicago, IL 60603
Tel: (312) 372-0770
Fax: (312) 372-9818

CERTIFICATE OF SERVICE

I, Monica Burkoth, hereby certify that, in accordance with Fed. R. Civ. P. 5 and LR 5.5 and the General Order on Electronic Case Filing (ECF), I served this Notice, together with the documents herein referred, electronically via the ECF-CM system on August 13, 2020.

/s/ Monica Burkoth

Monica Burkoth