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

Montrell Carr, et al.,	)	
	)	
Plaintiffs	)	1:17-cv-07135
	)	
-vs-	)	*(Judge Martha M. Pacold)*
	)	
Cook County et al	)	*(Magistrate Judge Weisman)*
	)	
Defendants	)	

PLAINTIFFS' MOTION TO CERTIFY CASE AS A CLASS ACTION

Pursuant to Rule 23(c), plaintiffs, by counsel, move the Court to order that this case proceed as a class action under Rule 23(b)(3) for:

> All persons who were detained at the Cook County Jail at any time between November 1, 2013 and March 12, 2020 and, after having been referred to an oral surgeon by a dentist at the Jail, awaited treatment at the Stroger Hospital Oral Surgery Clinic, excluding those persons who are members of the subclass certified in *Whitney v. Khan*, 18-cv-4475, N.D.Ill., Mem.Op. March 25, 2020, ECF No. 175.

Plaintiffs explain below the proposed starting and endings date for the class and demonstrate that the proposed class meets each of the requirements of Rule 23(a) and Rule 23(b)(3).

I. Background

"Dental care is one of the most important medical needs of inmates." *Board v. Farnham*, 394 F.3d 469, 480 (7th Cir. 2005) (citing *Wynn v. Southward*, 251 F.3d 588, 593 (7th Cir. 2001)). Defendant Cook County virtually

eliminated dental care at the Cook County Jail in 2007, when it decided to staff the Jail with only a single dentist.

This staffing decision resulted in deficient dental care that was identified by the United States in its consent decree with Cook County and the Sheriff, *United States v. Cook County*, 10-cv-2946.[1] The staffing decision was also challenged by a class of present and former detainees in *Smentek v. Cook County*, No. 09-cv-529, N.D.Ill.

The district court in *Smentek* allowed the case to proceed as a class action for

> all inmates housed at Cook County Department of Corrections on or after January 1, 2007, who have made a written request for dental care because of acute pain and who suffered prolonged and unnecessary pain because of lack of treatment.

Smentek v. Cook Cty., No. 09 C 529, 2011 WL 13136965, at *6 (N.D. Ill. Aug. 11, 2011). The *Smentek* court subsequently narrowed the class to focus on "one common policy of staffing the jail with only one dentist," *Red Barn*

[1] This consent decree litigation was brought under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 et seq., which authorizes the Attorney General to bring a civil action for injunctive relief in response to "egregious or flagrant conditions" at county jails and other public institutions. The statute does not limit private actions. 42 U.S.C. § 1997j.

Cook County agreed in the consent decree to "ensure that inmates received adequate dental care, and follow up, in accordance with generally accepted correctional standards of care." Consent Decree, ¶ 58(a), *United States v. Cook County*, 10-cv-2946, ECF No. 13 at 37.

Motors, Inc. v. NextGear Capital, Inc., 915 F.3d 1098, 1102 (7th Cir. 2019).

The final class in *Smentek* was defined as follows:

> All inmates housed at Cook County Department of Corrections from January 1, 2007 to October 31, 2013 who made a written request for dental care because of acute pain and who suffered prolonged and unnecessary pain because of lack of treatment.

Smentek v. Sheriff of Cook County, 09 C 529, 2016 WL 5939704, at *5 (N.D. Ill. Oct. 13, 2016).[2]

As explained below, plaintiffs Montrell Carr and Quentin Scott were members of the class originally certified in *Smentek v. Cook County*, No. 09-cv-529; the claim that each asserts in this case was excluded from the *Smentek* class when, on October 13, 2016, the district judge in *Smentek* set the closing date for the class as October 31, 2013.

Plaintiff Carr was a pre-trial detainee at the Jail from August 22, 2014 until October 3, 2016. (Exhibit 1, Movement Log, App. 1-5.) On April 26, 2016, a dentist at the Jail referred Carr to the Stroger Hospital Oral Surgery Clinic ("Stroger") for extraction of two teeth. (Exhibit 2, Carr Medical Records, App. 6.) Carr submitted a grievance on August 15, 2016, complaining that he had not been treated for his dental pain. (Exhibit 3, Carr Grievance, App. 7.) The Jail responded to the grievance on September 9, 2016, advising

[2] *Smentek* was resolved by settlement without any admission of liability.

Carr that he was scheduled to see an oral surgeon at Stroger "in September." (Exhibit 3 at 2, Carr Grievance, App. 8.) Plaintiff filed an appeal, complaining about the pain:

> I been waiting for 4 months. I am in pain. I need attention asap. I been waiting patient[ly] for a long time. I can't sleep or eat on my right side and it starting to hurt on my left side to[o].

(Exhibit 3 at 2, Carr Grievance, App. 8.) The Jail responded to Carr's complaint of unbearable pain with the news that Carr's appointment with the oral surgeon had been "changed to October." (*Id.*) Carr left the Jail on October 3, 2016 without having seen the oral surgeon. (*Id.*)

Quentin Scott was a pre-trial detainee at the Jail from June 23, 2013 to May 22, 2014. (Exhibit 4 at 2, Scott Testimony at Smentek Trial, App. 10.) On three occasions—August 8, 2013 (Exhibit 5 at 1, Scott Medical Records, App. 25), December 20, 2013 (Exhibit 5 at 2, App. 26), and March 27, 2014 (Exhibit 5 at 3, App. 27)—a dentist at the Jail referred Scott to Stroger for extraction of two teeth. Scott submitted several grievances complaining about his dental pain. (Exhibit 6, Grievances, App. 28-31.) Scott stated the following in the grievance he submitted on December 8, 2013:

> … I was seen by a dentist in dispensary in DIV-11 around 8-5-13 and was scheduled for oral surgery to get my wisdom tooth pulled. Here it is 12-8-2013, I have yet to see the oral surgery and the pain is getting to be unbearable. I am suffering!!! In pain and can't eat properly. I need this situation solved as soon as possible.

Exhibit 6 at 3, App. 30.)

Scott was finally treated by the oral surgeon on March 28, 2014, when the surgeon extracted two teeth. (Exhibit 4 at 16, Scott Testimony at Smentek Trial, App. 24.) Scott described in his testimony in *Smentek* the severe pain he experienced while waiting to see the oral surgeon. (Exhibit 4, Scott Testimony at Smentek Trial, App. 12:5-16, 16:4-10, 18:10-11, 22.)

II. Plaintiff's Theory of the Case

The Due Process Clause of the Fourteenth Amendment requires Cook County to provide detainees at the Cook County Jail with dental care because people in custody "are no longer able to take steps to protect their own health." *Daniel v. Cook County*, 833 F.3d 728, 733 (7th Cir. 2016).

Cook County provides dental care for its residents at Stroger Hospital. A resident of Cook County who need the services of an oral surgeon to alleviate pain can telephone the Stroger Hospital hotline and make an appointment for the next day. (Exhibit 7, Deposition of Juana Marcias, 26:7-20, *Ammons v. Dart*, 18-cv-5271, App. 57.) The County treats detainees at the Cook County Jail differently. As the district court in *Whitney v. Khan*, 18 C 4475, 2020 WL 1445610 (N.D. Ill. Mar. 25, 2020) recently summarized:

i. For a patient to be scheduled at the Stroger oral surgery clinic, the jail dentist enters an electronic referral order for a certain tooth to be extracted.

ii. After the jail dentist enters the referral, the responsibility to schedule an oral surgery appointment transfers to somebody within the oral surgery clinic at Stroger.

iii. All electronic referral orders for the oral surgery clinic are received in a queue monitored by a clerk assigned to Stroger Hospital's Referral Support Center.

iv. The clerk schedules patients based on the "next available date" offered by the computer.

v. All appointments for detainees at the Jail are scheduled 10 to 12 weeks away and no independent judgment is exercised to schedule an appointment.

Whitney v. Khan, 18-cv-4475, 2020 WL 1445610 at *3.

Plaintiffs intend to prove that this convoluted system satisfies the "objective unreasonableness" standard required to prove that health care provided to pre-trial detainees is unconstitutional. *Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018.) The result of this objectively unreasonable system is that detainees at the Jail who require the services of an oral surgeon do not get treated in a timely manner and experience gratuitous pain.

Cook County employed an oral surgeon at the Jail before it cut back in 2007 on dental services for detainees. (Exhibit 8, Townsend Memo, App. 153.) The cutbacks reduced the dental staff to "one dentist, and his sole contribution to the inmates' dental health was extractions." *Phillips v. Sheriff of Cook County*, 828 F.3d 541, 545 (7th Cir. 2016).

In 2011, the Chief of Dental Services as the Jail, Dr. Ronald Townsend, requested Cook County to provide funds to restore one oral surgeon position at the Jail. Dr. Townsend requested that the County budget allow the hiring of an oral surgeon:

> An Oral Surgeon is a regional specialist surgeon treating the entire Craniomaxillofacial Complex: anatomical area of the mouth, jaw, face, skull as well as associated structures. The most common surgical procedures previously provided by oral surgeons at CHS are: Dentoalveolar surgery (surgical removal of impacted teeth, difficult tooth extractions, extractions of medically compromised patients, treatment of benign pathology (cysts, tumors, etc.): Biopsy's and Diagnosis of malignant pathology of the oral cavity: Diagnosis of hard and soft tissue trauma (jaw fracture, cheek bone fracture, nasal fractures, skull and eye socket fractures.

(Exhibit 8, Townsend Memo, App. 153.) Dr. Townsend warned the County that it was "absolutely necessary to add" an oral surgeon. (Exhibit 8 at 2, App. 153.) Dr. Townsend described the need for a full-time oral surgeon as "imperative" and one of the "essential services." (Exhibit 8 at 3, App. 154.)

Dr. Townsend's concerns where echoed by Dr. Jorelle Alexander, who joined Cook County in 2013 as its Systems Director of Oral Health. (Exhibit 9, Alexander Dep. 5:14-6:6, App. 159.) Dr. Alexander described in an email dated September 2, 2015 the need for an oral surgeon at the Jail as "DESPERATE." (Exhibit 10, Email Alexander to Panos, April 8, 2016, App. 260.) The position, however, has never been filled. (Exhibit 9, Alexander Dep. 19:23-20:1, App. 173-74; Alexander Dep. 103:21-104:4, App. 257-58.)

Plaintiffs' theory of the case is that by not providing oral surgery services at the Jail, and instead, as the district court found in *Whitney v. Khan*, 18-cv-4475, quoted above at 6, requiring detainees to wait 10 to 12 weeks for treatment by an oral surgeon, defendant Cook County failed to satisfy its

constitutional duty to provide dental care to detainees and thereby caused harm because their pain was "unnecessarily prolonged." *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010).[3]

Plaintiffs show below that this case should proceed as a class action under Rule 23(b)(3).

III. The Proposed Class Is Ascertainable

Plaintiffs propose that the case proceed as a class action for:

> All persons who were detained at the Cook County Jail at any time between November 1, 2013 and March 12, 2020 and, after having been referred to an oral surgeon by a dentist at the Jail, awaited treatment at the Stroger Hospital Oral Surgery Clinic, excluding those persons who are members of the subclass certified in *Whitney v. Khan*, 18-cv-4475, N.D.Ill., Mem.Op. March 25, 2020, ECF No. 175.

Plaintiffs show below that this class meets the test of *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657 (7th Cir. 2015) "that a class must be defined clearly and that membership be defined by objective criteria rather than by, for example, a class member's state of mind."

1. Electronic Medical Records

Each member of the proposed class is readily ascertainable from electronic medical records maintained by the defendants. Defendants have

[3] The Court should reject any attempt by defendants to argue the merits of this claim on plaintiffs' motion for class certification because "certification is largely independent of the merits." *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1031 (7th Cir. 2018), quoting *Schleicher v. Wendt*, 618 F.3d 679, 685 (7th Cir. 2010).

produced in pre-trial discovery in this case a spreadsheet identifying 2080 referrals made by dentists at the Jail for treatment by an oral surgeon from February 20, 2014 through July 7, 2017. *See* Joint Written Status Report, July 2, 2019, ECF No. 84. Plaintiffs expect that defendants will be able to provide this information for the entirety of the class period. As in *Lacy v. Cook County*, 897 F.3d 847, 864 (7th Cir. 2018), the records maintained by defendants identify each member of the class.

2. Members of the Oral Surgery Subclass in *Whitney v. Khan*, 18-cv-4475 Should Be Excluded from the Class in this Case

Whitney v. Khan, 18-cv-4475, challenges the dental care provided to detainees at the "RTU" or "Residential Treatment Unit" of the Cook County Jail. On March 11, 2019, the Court in *Whitney* ordered that the case could proceed as a class action for detainees assigned to the RTU from January 1, 2017 "who submitted a written 'Health Service Request Form' processed as 'urgent' by the RTU dental assistant and who did not receive an evaluation by a dentist for at least 14 days after submitted the request." *Whitney v. Khan*, 330 F.R.D. 172, 180 (N.D. Ill. 2019). Thereafter, the district court in *Whitney* certified a subclass of detainees assigned to the RTU "who were subsequently referred by the RTU dentist to the Stroger

Hospital Oral Surgery Clinic." *Whitney v. Khan*, 18-cv-4475, 2020 WL 1445610, at *6 (N.D. Ill. Mar. 25, 2020).

Members of the *Whitney* oral surgery subclass should be excluded from the class in this case. *Whitney* was filed more than two years ago, on June 27, 2018, involves factual issues unique to the RTU, and is now pending on plaintiffs' fully briefed motion for summary judgment. Plaintiffs in this case have no desire to interfere with *Whitney* and therefore propose to exclude members of the *Whitney* oral surgery subclass from any class in this case.

3. The Temporal Limits of the Class

a. Starting Date

Plaintiffs propose that the class begin on November 1, 2013 for the following reasons:

Plaintiffs were members of the plaintiff class in *Smentek v. Sheriff of Cook County*, No. 09-cv-529 until the district court in that case set a closing date for the class of October 31, 2013.[4] That order was entered on October 13, 2016. Persons excluded from the *Smentek* class could then file their own lawsuit within the time plaintiff "would have under a state savings statute applicable to a party whose action has been dismissed for actions unrelated

[4] The original and final class definitions in *Smentek* are set out above at 1-2.

to the merits." *Chardon v. Fumero Soto*, 462 U.S. 650, 661 (1983). This is the one-year period is set by 735 ILCS 5/13-217.

Plaintiff Carr met that deadline by filing this case on October 3, 2017.[5] (Complaint, ECF No. 1.) Carr brought the case individually and for:

> All persons confined at the Cook County Jail from October 31, 2013 to the date of entry of judgment in this case who were referred by a dentist at the Jail for treatment by an oral surgeon and who were not treated by an oral surgeon within 30 days.

(Complaint, ¶ 28, ECF No. 1.)

Carr's complaint tolled the running of the statute of limitations for all members of the putative class pursuant to *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974).[6] The decision of the Supreme Court in *Chardon v. Fumero Soto*, 462 U.S. 650 (1983) teaches that the complaint relates back to November 1, 2013, the day following the closing date of the *Smentek* class.

In *Chardon*, "[s]hortly before Puerto Rico's one-year statute of limitations would have expired, a class action was filed against petitioners on

[5] Scott joined the case in the amended complaint filed on July 13, 2018. (ECF No. 30.)

[6] The Court should reject any argument that *American Pipe* tolling cannot apply because of *China Agritech, Inc. v. Resh*, 138 S.Ct. 1800 (2018). As the Seventh Circuit explained in *Supreme Auto Transport, LLC v. Arcelor Mittal USA, Inc.*, 902 F.3d 735 (7th Cir. 2018), *China Agritech* holds that, upon denial of class certification, "a putative class member may not commence a new class action beyond the time allowed by the applicable statute of limitations." *Id.* at 742. *China Agritech* has nothing to do with this case because the district court changed the ending date of the class in *Smentek* after certifying the class.

respondents' behalf under 42 U.S.C. § 1983. Subsequently class certification was denied because the class was not sufficiently numerous." *Id.* at 651-52. The question before the Court was how much time remained in the statute of limitations after the denial of class certification. The Court answered that question as follows:

> After class certification is denied, that federal interest is vindicated as long as each unnamed plaintiff is given as much time to intervene or file a separate action as he would have under a state savings statute applicable to a party whose action has been dismissed for reasons unrelated to the merits, or, in the absence of a statute, the time provided under the most closely analogous state tolling statute.

Id. at 661. Illinois law provides a one-year period to refile a lawsuit for "a party whose action has been dismissed for reasons unrelated to the merits." 735 ILCS 5/13-217. Plaintiffs filed this lawsuit within that one-year period and all members of the proposed class should be entitled to rely on *American Pipe* tolling. The starting date for the class should therefore be November 1, 2013, the day after the closing date of the *Smentek* class.

b. Ending Date

Plaintiffs propose that the class end on March 12, 2020. This is the date that all procedures changed at the Jail because of the COVID

pandemic.[7] This pandemic changed the way dental services are delivered both in and out of the Jail and destroyed the cohesiveness of the class. Plaintiffs therefore seek to retain a cohesive class by adopting the ending date of March 12, 2020.

IV. The Proposed Class Satisfies Rule 23(a) and Rule 23(b)(3)

This Court recently canvassed the requirements of class certification in *Elward v. Electrolux Home Products, Inc.*, 15-CV-09882, 2020 WL 2850982 (N.D. Ill. June 1, 2020):

> Class certification is governed by Federal Rule of Civil Procedure 23. Under Rule 23(a), class certification is permitted only when: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a); *see also Messner v. Northshore Univ. Healthsystem*, 669 F.3d 802, 811 (7th Cir. 2012). When class certification is sought pursuant to Rule 23(b)(3), "proponents of the class must also show: (1) that the questions of law or fact common to the members of the proposed class predominate over questions affecting only individual class members; and (2) that a class action is superior to other available methods of resolving the controversy." *Messner*, 669 F.3d at 811 (citing *Siegel v. Shell Oil Co.*, 612 F.3d 932, 935 (7th Cir. 2010)).

[7] *See* https://www.cookcountysheriff.org/sheriff-dart-expands-precautionary-measures-for-covid-19-at-cook-county-department-of-corrections/

Elward v. Electrolux Home Products, Inc., 2020 WL 2850982, at *6–7. Plaintiff shows below that the proposed class satisfies each of these requirements.

1. Numerosity

Rule 23(a)(1) requires that the proposed class must be "so numerous that joinder of all members is impracticable." The named plaintiffs are not required "to specify the exact number of persons in the class," *Marcial v. Coronet Ins. Co.*, 880 F.2d 954, 957 (7th Cir. 1989), and the Court "may make logical inferences to determine numerosity." *Magpayo v. Advocate Health and Hospitals Corporation*, 2018 WL 950093, at *10 (N.D.Ill. 2018).

As explained above at 9, defendants produced in pre-trial discovery in this case a spreadsheet identifying 2080 referrals made by dentists at the Jail for treatment by an oral surgeon from February 20, 2014 through July 7, 2017. Defendants also produced a spreadsheet identifying the detainees who were scheduled to be transported from the Jail to Stroger for oral surgery services between January 3, 2013 and October 9, 2019. This spreadsheet consists of 3886 records for 2186 detainees. (Some oral surgery treatments require more than one visit.)

The proposed class in this case easily meets the numerosity requirement of Rule 23(a)(1). The Seventh Circuit held in *Mulvania v. Sheriff of*

Rock Island County, 850 F.3d 849, 859 (7th Cir. 2017): "While there is no magic number that applies to every case, a forty–member class is often regarded as sufficient to meet the numerosity requirement." The records produced by defendants show that the size of the proposed class if far in excess of this threshold and it is therefore "reasonable to believe it [is] large enough to make joinder impracticable and thus justify a class action suit." *Arnold Chapman & Paldo Sign & Display Co. v. Wagener Equities Inc.*, 747 F.3d 489, 492 (7th Cir. 2014).

2. Commonality

To satisfy the commonality requirement of Rule 23(a)(2), the "prospective class must articulate at least one common question that will actually advance all of the class members' claims." *Phillips v. Sheriff of Cook Cty.*, 828 F.3d 541, 550 (7th Cir. 2016); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011).

The district court in *Whitney v. Khan*, 18 C 4475, 2020 WL 1445610, at (N.D. Ill. Mar. 25, 2020) found that the following question was "highly likely to drive the resolution" of the oral surgery issue:

> Whether the members of the proposed subclass have been subjected to a common policy of unreasonable delay in scheduling oral surgery procedures following referral by a dentist.

Whitney, 2020 WL 1445610 at *3.

This case presents an additional common question:

> Whether defendants' refusal to replace the oral surgeon employed at the Jail before the 2007 cutbacks has harmed detainees referred to an oral surgeon by causing unreasonable delay in treatment?

Resolution of either question will generate "common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (emphasis in original and internal quotation omitted). As in *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750 (7th Cir. 2014), "the plaintiffs' claims and those of the class they would like to represent all derive from a single course of conduct" by defendants. *Id.* at 756. That single course of conduct is the Jail's dental care cutbacks, the County's refusal to hire an oral surgeon, and its adoption of a defective procedure for providing oral surgery services to detainees at the Jail. This case therefore satisfies the commonality requirement of Rule 23(a)(2).

3. Typicality

Typicality in Rule 23(a)(3) "is closely related to the preceding question of commonality." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *De La Fuente v. Stokeley–Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). Although "[t]he typicality requirement may be satisfied even if there are factual distinctions

between the claims of the named plaintiffs and those of other class members," the requirement "primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Id.*

Plaintiffs' challenge in this case arises from the County's refusal to hire an oral surgeon, and its adoption of a defective procedure to provide oral surgery services to detainees at the Jail. This is the "same event or practice or course of conduct that gives rise to the claims of other class members and [his] claims are based on the same legal theory." *Oshana v. Coca-Cola Co.*, 472 F.3d506, 514 (7th Cir. 2006). The case therefore satisfies the typicality requirement of Rule 23(a)(3).

4. Adequacy

Plaintiffs are represented by competent counsel and they will "fairly and adequately protect the interests of the class," as required by Rule 23(a)(4).

First, defendants do not assert any unique defense against any of the named plaintiffs. *Randall v. Rolls–Royce Corp.*, 637 F.3d 818, 824 (7th Cir. 2011); *Lipton v. Chattem, Inc.*, 289 F.R.D. 456, 459 (N.D. Ill. 2013).

Second, plaintiff is represented by counsel skilled and experienced in these matters.

Plaintiffs' principal attorney (Kenneth N. Flaxman), was admitted to practice in 1972; his work in class action litigation includes *United States Parole Commission v. Geraghty*, 445 U.S. 388 (1980) (class action challenging federal parole guidelines); *Doe v. Calumet City*, 128 F.R.D. 93 (N.D.Ill. 1989) (class action challenging strip search practice of Calumet City police department); *Calvin v. Sheriff of Will County*, 405 F.Supp.2d 933 (N.D.Ill. 2005) (class action challenging strip search practice at Will County Jail).[8] Plaintiffs' principal attorney has also argued more than 150 federal appeals, including five cases in the United States Supreme Court.[9]

Plaintiffs' second attorney (Joel A. Flaxman), is also competent to represent the class; he was admitted to practice in 2007, served three years in judicial clerkships,[10] followed by four years as a trial attorney in the United States Department of Justice, Civil Rights Division, before entering private practice.

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[8] With co-counsel, plaintiffs' principal attorney has litigated (or is litigating) several class actions against the Sheriff of Cook County, including *Jackson v. Sheriff of Cook County*, 2006 WL 3718041(06-CV-493, N.D.Ill., Dec. 14, 2006); *Parish v. Sheriff of Cook Cty.*, No. 07 4369, 2008 WL 4812875 (N.D. Ill. Oct. 24, 2008); *Phipps v. Sheriff of Cook County*, 249 F.R.D. 298 (N.D.Ill. 2008); *Lacy v. Dart*, No. 14 C 6259, 2015 WL 1995576 (N.D. Ill. Apr. 30, 2015); and *Bell v. Dart*, No. 14 C 8059, 2016 WL 337144 (N.D. Ill. Jan. 26, 2016).

[9] In addition to *Geraghty*, Flaxman argued *Browder v. Director, Department of Corrections*, 434 U.S. 257 (1978); *Jaffee v. Redmond*, 518 U.S. 1 (1996); *Ricci v. Arlington Heights, cert dismissed as improvidently granted*, 523 U.S. 613 (1998), and *Wallace v. Kato*, 549 U.S. 384 (2007).

[10] Counsel was a staff law clerk for the Seventh Circuit from 2007 to 2009 and then a law clerk for the Honorable Rebecca Pallmeyer from 2009 to 2010.

5. Certification Is Appropriate under Rule 23(b)(3)

The common issues about the County's refusal to hire an oral surgeon to work at the Jail and its adoption of a defective procedure to provide oral surgery services for detainees at the Jail "can be resolved for all members of a class in a single adjudication." *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012) (internal citation omitted). These "common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)

In addition to satisfying the predominance prong of Rule 23(b)(3), a class action is superior to other methods for adjudicating the claims of the members of the proposed class. The amount of damages to which each plaintiff would be entitled is small: in *Smentek v. Sheriff*, 09-cv-529, the district judge approved as fair and reasonable a settlement that was expected to provide most class members with an award of one hundred dollars. *Smentek*, ECF No. 580 at 2. Thus, "the amount of damages to which each plaintiff would be entitled is so small that no one would bring this suit without the option of a class." *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1030 (7th Cir. 2018).

V. Conclusion

For the reasons above stated, the Court should order that this case proceed as a class action under Rule 23(b)(3) for

> All persons who were detained at the Cook County Jail at any time between November 1, 2013 and March 12, 2020 and, after having been referred to an oral surgeon by a dentist at the Jail, awaited treatment at the Stroger Hospital Oral Surgery Clinic, excluding those persons who are members of the subclass certified in *Whitney v. Khan*, 18-cv-4475, N.D.Ill., Mem.Op. March 25, 2020, ECF No. 175.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
Attorneys for Plaintiff