

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

MONTRELL CARR and QUINTIN SCOTT,	)	
individually and for a class,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	Case No. 17-cv-7135
v.	)	
	)	Hon. Martha M. Pacold
SHERIFF OF COOK COUNTY and COOK	)	
COUNTY, ILLINOIS	)	Magistrate Hon. David Weisman
	)	
<i>Defendants.</i>	)	

**DEFENDANT COOK COUNTY’S SUPPLEMENTAL RESPONSE TO PLAINTIFFS’  
MOTION TO CERTIFY CASE AS A CLASS ACTION**

Defendant COOK COUNTY, ILLINOIS, by its attorney KIMBERLY M. FOXX, State’s Attorney of Cook County, through Special Assistant State’s Attorney, JOHNSON & BELL, LTD., pursuant to Federal Rule of Civil Procedure 23, submits the following supplemental response in opposition to Plaintiffs’ motion to certify the case as a class action.

**INTRODUCTION**

On December 8, 2020, the Seventh Circuit issued its opinion in *McFields v. Dart*, No. 20-1391, 2020 WL 7223689 (7th Cir. Dec. 8, 2020), affirming the district court’s denial of class certification in a case involving dental care at the Cook County Jail (“Jail”). The attorneys who represent the plaintiff in *McFields* also represent Plaintiffs in this case.

In *McFields*, the plaintiff’s theory of the case was that by not “provid[ing] all detainees who complain of dental pain with face-to-face assessments,” Cook County failed to provide adequate dental care to detainees. *Id.* at \*1. Plaintiffs in this case bring a similar claim, albeit one that is focused on a different aspect of dental care at the Jail, namely, the oral surgery referral process. (Mot. for Class Cert. 7–8, ECF No. 129.) Plaintiffs’ theory of the case is that by not

“providing oral surgery services at the Jail, and instead . . . requiring detainees to wait 10 to 12 weeks for treatment by an oral surgeon,” Cook County failed to provide adequate dental care to detainees. (*Id.*) The similarity between the two claims makes *McFields* directly on point to the present case.

In *McFields*, the Seventh Circuit held that the district court did not abuse its discretion in finding that the plaintiff failed to meet Rule 23’s requirements of commonality, typicality, and predominance. Defendant Cook County supplements its response in opposition to Plaintiffs’ motion for class certification to discuss the Seventh Circuit’s opinion in *McFields* and how it supports denial of class certification in this case.

## **ARGUMENT**

### **I. COMMONALITY REQUIREMENT HAS NOT BEEN MET.**

Plaintiffs propose two questions to be resolved on a classwide basis: (1) Whether the proposed class members were subjected to “a common policy of ***unreasonable delay*** in scheduling oral surgery procedures following referral by a dentist”; and (2) Whether not having an oral surgeon at the Jail caused an “***unreasonable delay*** in treatment” for each proposed class member. (Mot. for Class Cert. 15–16, emphasis added.)

In *McFields*, the Seventh Circuit reiterated that objective unreasonableness is “by its nature, an inquiry not suitable for resolution as to all class members in one fell swoop.” *McFields*, 2020 WL 7223689, at \*4; *see also Phillips v. Sheriff of Cook Cty.*, 828 F.3d 541 (7th Cir. 2016) (stating that “the constitutionality of a wait for medical treatment will depend on a variety of individual circumstances”) (cited by Defendant in its Response, at 23). In fact, the “individualized inquiry” that would be necessary to prove objective unreasonableness was so apparent that the

Seventh Circuit “quickly discard[ed]” the plaintiff’s proposed question. *McFields*, 2020 WL 7223689, at \*4.

As the Seventh Circuit pointed out:

It matters immensely that each detainee presents a different situation that involved a different type of dental pain, took place at a different time, and involved different medical professionals and prison staff; it is precisely these sorts of dissimilarities within the proposed class that have the potential to impede the generation of common answers apt to drive resolution of the litigation.

*Id.* (internal citations, quotation marks, and alterations omitted).

Likewise, Plaintiffs here propose a class of detainees whose individual circumstances must be considered when determining whether any delay in treatment was objectively unreasonable. As *McFields* confirmed, deciding whether a delay in treatment was objectively unreasonable is not a question that can be resolved on a classwide basis. *See id.* As such, it is not a question that is common to the proposed class, and therefore, Plaintiffs have failed to meet Rule 23’s commonality requirement.

## **II. TYPICALITY REQUIREMENT HAS NOT BEEN MET.**

In *McFields*, the Seventh Circuit stated that it was insufficient for a plaintiff to assert that the same “course of conduct” affected all members of the class. *McFields*, 2020 WL 7223689, at \*6. Rather, a plaintiff’s claim must also have “the same essential characteristics as the claims of the class at large,” which is what “the [typicality] requirement is meant to ensure.” *Id.* (citation omitted). The Seventh Circuit affirmed the district court’s conclusion that the “highly individualized inquiry” required to evaluate each claim means that no claim is typical. *Id.*

In the present case, Plaintiffs offer absolutely no evidence to support their bald contention that their claims are typical of all proposed class members. Instead, Plaintiffs’ argument for typicality rests solely on the fact that their “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.” (Mot. for Class Cert. 17.) In other words, Plaintiffs are simply arguing that the same “course of conduct” is present. This narrow view of typicality was rejected in *McFields*. Plaintiffs must demonstrate that their claims have “the same essential characteristics as the claims of the class at large.” *McFields*, 2020 WL 7223689, at \*6. On this front, Plaintiffs have offered neither argument nor evidence. Thus, Plaintiffs have failed to meet Rule 23’s typicality requirement.

### **III. PREDOMINANCE REQUIREMENT HAS NOT BEEN MET.**

The Seventh Circuit concluded in *McFields* that “predominance is doomed here.” *Id.* Given its analysis on commonality and typicality, the Seventh Circuit easily held that the plaintiff did not satisfy the predominance requirement given that “Rule 23(b)(3) is ‘far more demanding’ than the commonality requirement that he already failed to meet.” *Id.* (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 624 (1997)). The Seventh Circuit agreed with the district court’s finding that individual issues predominate over common questions, which is “the opposite of what Rule 23(b)(3) requires.” *Id.*

Here, multiple individual issues must be resolved before liability can be imposed, including the length of time between the oral surgery referral and treatment, the level of pain, if any, each detainee experienced and whether that allegation of pain is credible, the availability of treatment in the form of pain medication, and causation issues, among others. Thus, even if a common question exists, separate trials for each proposed class member would still be required to resolve the individual issues, and these trials would overwhelm the litigation and predominate over any common questions—the opposite of what Rule 23(b)(3) requires. Plaintiffs have not met their burden on the predominance requirement.

WHEREFORE, Defendant Cook County respectfully requests that this Honorable Court deny Plaintiffs' motion for class certification and grant any other relief this Court deems equitable and just.

Respectfully Submitted,

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/s/ Samuel D. Branum  
Special Assistant State's Attorney

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