

**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 OPPOSED MOTION FOR LEAVE TO FILE  
A SUR-REPLY IN OPPOSITION 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., respectfully moves for leave of Court to file a sur-reply in opposition to Plaintiffs’ motion to certify case as a class action. In support of its motion, Defendant states as follows:

1. On January 4, 2021, Plaintiffs filed a reply memorandum in support of their motion to certify case as a class action. (Reply, ECF No. 146.) In their reply memorandum, Plaintiffs raised new arguments and submitted new evidence, to which Defendant did not have an opportunity to respond. Defendant seeks leave of Court to file a sur-reply to address the following matters.<sup>1</sup>

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<sup>1</sup> Defendant is aware of this Honorable Court’s standing order that “[t]he Court is capable of discerning if a new argument has been raised in a reply brief” and that “such errors do not require supplemental motion practice.” In an abundance of caution, however, Defendant brings this motion should the Court elect to consider Plaintiffs’ new arguments.

2. In their motion for class certification, Plaintiffs proposed two questions they believe meet Rule 23's commonality requirement. (Mot. for Class Cert. 15–16, ECF No. 129.) Plaintiffs proposed the following two questions:

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

(2) 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.

(*Id.*)

3. In their reply memorandum, Plaintiffs propose, for the first time, a third question:

(3) Whether Cook County is violating the duty imposed by the Constitution to provide adequate dental care to pre-trial detainees when it requires detainees referred to an oral surgeon by a Jail dentist to wait the same amount of time for oral surgery treatment as members of the public.

(Reply 10.)

4. Defendant did not have an opportunity to respond to Plaintiffs' third proposed question, which does not meet the standards of Rule 23's commonality requirement.

5. In addition, Plaintiffs argue in their reply memorandum, for the first time, that the grievances produced by Sheriff Dart "makes plain that during the proposed class period, referral to an oral surgeon was expected to result in a delay of more than twelve weeks." (*Id.* at 6.) Plaintiffs did not submit these grievances in their motion for class certification, and Defendant did not have an opportunity to address the fact that these grievances do not support Rule 23's commonality requirement.

6. Plaintiffs also argue in their reply memorandum, for the first time, that the grievances "leave no doubt" that the Plaintiffs' claims are typical of the proposed class members'

claims. (*Id.* at 20.) Offering this new evidence for the first time in their reply brief is especially troublesome where, in their original motion, Plaintiffs offered absolutely no evidence to support Rule 23's typicality requirement.

7. Finally, Plaintiffs misconstrue some of Defendant's arguments, and Defendant would like an opportunity to address Plaintiffs' inaccuracies. For example, Plaintiffs argue that "Dr. Alexander's deposition testimony that she was following the instructions of the medical monitor in the CRIPA litigation are inconsistent with her more recent claim that she made an independent determination that an oral surgeon was not required at the Jail." (*Id.* at 19.) However, there is nothing inconsistent with Dr. Alexander making an independent determination based on her assessment of the need for an oral surgeon at the Jail, while at the same time following the recommendations of the medical monitor.

8. Plaintiffs also misinterpret Defendant's analysis of *McFields v. Dart*, 982 F.3d 511 (7th Cir. 2020), as "assum[ing] that *McFields* overruled *Driver v. Marion Cty. Sheriff*, 859 F.3d 489 (7th Cir. 2017)." (Reply 4.) This is not the case. Defendant's analysis of *McFields* is consistent with *Driver*, and it is Plaintiffs who are misreading *Driver*. A claim that detainees are detained for an unconstitutionally unreasonable length of time, as was the case in *Driver*, does not involve individual issues. On the other hand, a claim that detainees received inadequate or delayed dental care, as in *McFields* and the present case, *does* involve individual issues. *See McFields*, 982 F.3d at 516 (stating that the standard for assessing the adequacy of medical care "requires courts to focus on the totality of facts and circumstances faced by the individual" (quoting *McCann v. Ogle County*, 909 F.3d 881, 886 (7th Cir. 2018))).

9. Should this Honorable Court consider the new arguments and evidence presented by Plaintiffs for the first time in their reply memorandum, then Defendant respectfully requests an opportunity to address the arguments and evidence in a sur-reply.

10. Plaintiffs oppose this motion and request a briefing schedule of January 13, 2021, to file a response to Defendant's motion.

WHEREFORE, Defendant Cook County respectfully requests that this Honorable Court enter an order granting it leave to file a sur-reply within twenty-one days, and for any such other relief this Court deems just and proper.

Respectfully Submitted,

KIMBERLY M. FOXX  
State's Attorney of Cook County

Dated: January 11, 2021

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

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**CERTIFICATE OF SERVICE**

I, Samuel D. Branum, 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 January 11, 2021.

/s/ Samuel D. Branum

Samuel D. Branum