

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

Montrell Carr and Quinton Scott,)
individually and for a class,)
)
 Plaintiffs,)
) No. 17-cv-7135
-vs-)
) *Judge Martha Pacold*
Sheriff of Cook County and Cook County,)
Illinois,)
)
 Defendants.)

JOINT STATUS REPORT

The parties submit this joint status report pursuant to the Court's order of
August 5, 2024:

1. The Seventh Circuit vacated and remanded this case, 99 F.4th 10786 (7th Cir. 2024) with instructions to “address whether the proposed class meets Rule 23(a) requirements of numerosity and adequacy of representation” and “to revise the class definition as it sees fit upon remand.” Id. at 1093.
2. The parties are unable to agree on the proposed next steps in this case.
3. Plaintiff's position is that the Court should set a schedule for the filing of supplemental submissions on numerosity and adequacy of representation. (Plaintiff expects to seek to add additional plaintiffs.) Plaintiff proposes that he file a supplemental brief on these issues within 42 days, with Defendants to respond 28 days thereafter, with 14 days for a reply.

4. Defendants' position is that the Court should stay further proceedings pending the decision of the United States Supreme Court on Defendants' petition for writ of certiorari, which is currently being drafted and due on October 21, 2024.

5. Plaintiff opposes this request because he believes the likelihood of Supreme Court review is slight and Defendants are unable to show irreparable harm, as required for a stay of mandate. *Bricklayers Loc. 21 of Illinois Apprenticeship & Training Program v. Banner Restoration, Inc.*, 384 F.3d 911, 912 (7th Cir. 2004). In addition, defendants did not request a stay of mandate from the Seventh Circuit. *See* FED. R. APP. P. 41(d).

6. Defendants disagree that the chance of review is slight, noting that the issue to be presented in the petition is subject to an acknowledged circuit split, that two judges of the Seventh Circuit have expressly stated that incentive awards are unlawful and that the Supreme Court "must" resolve that split, and that Plaintiff himself retained an experienced United States Supreme Court practitioner to respond to Defendants' petition for rehearing. The lack of a stay of the mandate is irrelevant since this Court does not require such a stay to begin with. *E.g., Peaceable Planet, Inc. v. Ty, Inc.*, No. 01 C 7350, 2004 U.S. Dist. LEXIS 13006, at *2 (N.D. Ill. July 12, 2004) (granting stay, no mention of stay of mandate).

7. Plaintiff points out that in *Peaceable Planet*, the petition for writ of certiorari had already been filed, and the court granted the stay "considering the relatively short amount of time anticipated to resolve the pending writ of

certiorari." *Peaceable Planet, Inc. v. Ty, Inc.*, No. 01 C 7350, 2004 WL 1574043, at *1 (N.D. Ill. July 13, 2004).

8. In the alternative, even if this Court does not grant the stay, Defendants will still be seeking United States Supreme Court review, which will require extensive briefing, and therefore, Defendants would request Plaintiff's proposed schedule for the filing of supplemental submissions on numerosity and adequacy of representation changed to: Plaintiff to file a supplemental brief within 63 days, with Defendants to respond 35 days thereafter, with 14 days for a reply.

9. Plaintiff suggests that this schedule is a reasonable compromise of the parties' positions.

Respectfully submitted,

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