

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

OPPOSED MOTION TO ADD ADDITIONAL PLAINTIFFS

Plaintiff, by counsel, moves the Court for leave to file an amendment to the operative complaint (ECF No. 30) to add James DeSavie, Ernest Brown, and Mohammad Abid, each a former detainee at the Cook County Jail who experienced excruciating pain while awaiting treatment by an oral surgeon, as additional plaintiffs.

Defendants oppose this motion. The parties are unable to agree on a briefing schedule. Plaintiff proposes that defendant file their response within 21 days (by November 6, 2024), with plaintiffs to reply within 14 days thereafter (by November 20, 2024). Defendants seek 45 days to file their response to this motion based on defense counsel's current schedule, and prior obligations and deadlines related to other cases. The parties agree that the Court should reset the dates previously set for briefing numerosity and adequacy of representation. Plaintiff proposes that all dates be postponed

by 28 days; defendants propose a minimum 60 days, but they plan on filing a motion to stay with this Court prior to that date.

Grounds for this motion are as follows:

1. Montrell Carr filed this case individually and for a putative class on October 3, 2017. Quintin Scott joined the case in an amended complaint (ECF No. 30), filed in accordance with the district court's order of July 13, 2018. (ECF No. 31.)

2. After the Court denied plaintiff's motion for class certification, Carr accepted an unconditional offer of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure on January 19, 2023. (ECF No. 178.)

3. Scott accepted a conditional offer of judgment, preserving his right to seek an incentive award and reimbursement of fees and costs, pursuant to Rule 68 of the Federal Rules of Civil Procedure on January 19, 2023. (ECF No. 179.)

4. Scott prosecuted an appeal to seek review of the Court's ruling on class certification; the case is now before the Court on remand for reconsideration of the motion for class certification. *Scott v. Dart*, 99 F.4th 1076 (7th Cir. 2024).

5. Plaintiff expects defendants to argue that Scott is not an adequate class representative because he accepted the conditional offer of

judgment. Plaintiff's position is that the Seventh Circuit's holding about plaintiff's standing to appeal is fully applicable to the question whether plaintiff is an adequate class representative.

6. Plaintiff acknowledges, however, that the Supreme Court did not conclusively decide this question in *U.S. Parole Commission v. Geraghty*, 445 U.S. 388 (1980). There, after ruling that the original plaintiff "was a proper representative for the purpose of appealing the ruling denying certification of the class," the Court left to the district court to determine whether the original plaintiff "may continue to press the class claims or whether another representative would be appropriate." *Id.* at 407.

7. To avoid expending resources litigating this legal question, plaintiff proposes to add James DeSavieu, Ernest Brown, and Mohammad Abid as additional plaintiffs and proposed class representatives pursuant to Rule 21 of the Federal Rules of Civil Procedure. *Ed Miniat, Inc. v. Globe Life Ins. Group, Inc.*, 805 F.2d 732, 736 (7th Cir. 1986) (leave of court required to add new parties).

8. In *Phillips v. Ford Motor Co.*, 435 F.3d 785, 787 (7th Cir. 2006), the Seventh Circuit explained that "[s]ubstitution of unnamed class members for named plaintiffs who fall out of the case because of settlement or other reasons is a common and normally an unexceptionable ('routine')

feature of class action litigation both in the federal courts and in the Illinois courts.” *Id.* at 787.

9. The Seventh Circuit reaffirmed this holding in *In re Allstate Corp. Securities Litigation*, 966 F.3d 595 (7th Cir. 2020), where it approved the district court’s order adding an additional class representative before ruling on class certification. *Id.* at 614. The Seventh Circuit rejected the defendant’s challenge to this ruling, observing that “[t]he new representative may be able to help resolve or avoid problems with another class representative or may enable certification of a modified class or subclasses.” *Id.* at 616. The Court of Appeals described adding an additional plaintiff as furthering the “goals of efficiency and economy,” *id.* at 615, and analogized adding a new representative party as “rearrang[ing] the seating chart within a single, ongoing action.” *Id.* at 615.

10. District courts in this circuit have freely allowed the addition or substitution of named plaintiffs before class certification. In *Lavender v. Driveline Retail Merchandising, Inc.*, 3:18-cv-2097, 2019 WL 4237848 (C.D. Ill. Sept. 6, 2019), the plaintiff sought to replace the named plaintiff while the motion for class certification was pending. *Id.* at *2. The district judge (Myerscough, J.) granted the motion. *Id.* at *4.

11. Similarly, in *In re Navistar MaxxForce Engines Mktg., Sales Practices, & Products Liab. Litig.*, 14-cv-10318, 2018 WL 316369 (N.D. Ill. Jan. 4, 2018), the district court (Gottschall, J.) allowed the plaintiff to add a new class representative to the case while the class motion was pending. *Id.* at *2.

12. In *Beringer v. Standard Parking Corp.*, 07-cv-5027, 2008 WL 4390626 (N.D. Ill. Sept. 24, 2008), the district court (Pallmeyer, J.), while considering a motion for class certification, concluded that the named plaintiff was not a member of the class, and invited plaintiff's counsel to substitute a new class representative. *Id.* at *1.

13. The proposed amendment to the complaint is attached.

It is therefore respectfully requested that the Court grant plaintiff leave to file the attached proposed amendment to the complaint, adding James DeSavieu, Ernest Brown, and Mohammad Abid as additional plaintiffs.

Respectfully submitted,

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

Montrell Carr and Quentin Scott,)
individually and for a class,)
)
Plaintiff,)
)
)
) No. 17-cv-7135
-vs-)
)
)
Sheriff of Cook County and Cook) (Judge Pacold
County, Illinois,)
)
Defendants.)

AMENDMENT TO AMENDED COMPLAINT

I. The caption is amended to include as additional plaintiffs James DeSavie, Ernest Brown, and Mohammad Abid.

II. The amended complaint is amended by the addition of paragraphs 33-43 set out below:

33. Plaintiff James DeSavieu was a detainee at the Cook County Jail from March 1, 2017 to December 12, 2017.

34. Plaintiff DeSavieau began to experience dental pain in about July of 2017.

35. A dentist at the Jail examined DeSavieu in about August of 2017, concluded that DeSavieu required treatment by an oral surgeon, and referred him for treatment by an oral surgeon at Stroger Hospital.

36. On November 2, 2017, DeSavieu complained to Jail officials that he had not yet been treated and was experiencing pain at level “10” on a 1-10 scale.

37. DeSavieu experienced excruciating pain until he was treated by an oral surgeon at Stroger Hospital in November or December of 2017.

38. Plaintiff Ernest Brown was a detainee at the Cook County Jail from December 27, 2016 to October 23, 2018.

39. In response to Brown’s complaint of dental pain, a dentist at the Jail examined Brown on May 26, 2017, concluded that Brown required treatment by an oral surgeon, and referred him for treatment by an oral surgeon at Stroger Hospital.

40. Brown experienced excruciating pain until he was treated by an oral surgeon at Stroger Hospital on October 6, 2017.

41. Plaintiff Mohammad Abid was a detainee at the Cook County Jail from April 20, 2017 to October 10, 2017.

42. In response to Abid’s complaint of dental pain, a dentist at the Jail examined Abid in May of 2017, concluded that Abid required treatment by an oral surgeon, and referred him for treatment by an oral surgeon at Stroger Hospital.

43. Abid experienced excruciating pain until he was treated by an oral surgeon at Stroger Hospital in September of 2017.

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