

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

QUINTIN SCOTT,)
Plaintiff,) No. 17 CV 7135
v.) Judge Martha Pacold
COOK COUNTY, et al,)
Defendants.)

**OPPOSED MOTION TO STAY PROCEEDINGS PENDING RULING ON
DEFENDANTS' PETITION FOR WRIT OF CERTIORARI**

Defendants, Thomas J. Dart, Sheriff of Cook County, and Cook County, Illinois (“Defendants”), through undersigned counsel, respectfully move this Court to stay all District Court proceedings in this case pending the ruling on their Petition for Writ of Certiorari, filed in the United States Supreme Court on October 21, 2024.

INTRODUCTION & PROCEDURAL HISTORY

Plaintiff, Quintin Scott, (“Scott”) filed a putative class action under 42 U.S.C. § 1983, claiming that his Fourteenth Amendment rights were violated due to a delay in dental care when he was detained at the Cook County Department of Corrections. After discovery, this Court denied Scott’s motion for class certification. (Dkt. 164.) Scott then accepted a conditional offer of judgment of \$7,500, reserving his right to appeal the denial of class certification in order to seek an additional “incentive award¹” as a class representative if class certification was later granted. (Dkt. 182.) This Court entered final judgment, and Scott appealed. (Dkt. 187.) At the appellate

¹ An incentive award in the class action context is generally understood as an award to compensate named plaintiffs for costs incurred in performing their role as class representatives—costs above and beyond what they would bear as ordinary class members. *See Espenschied v. DirectSat USA, LLC*, 688 F.3d 872, 876-77 (7th Cir. 2012).

level, Defendants argued that Scott lacked Article III standing based solely on a prospective incentive award, requiring dismissal of his appeal for lack of jurisdiction.

On April 29, 2024, the Seventh Circuit reversed this Court’s denial of class certification, finding that Scott had Article III standing, over the dissent of Circuit Judge Kirsch. *Scott v. Dart*, 99 F.4th 1076 (7th Cir. Apr. 29, 2024). Defendants petitioned for rehearing en banc, which was denied on July 23, 2024. However, Judge Easterbrook, joined by Chief Judge Sykes, issued a statement acknowledging the circuit split on the issue of incentive awards and calling upon the Supreme Court to act, explaining that it “must sooner or later resolve this conflict.” *Scott v. Dart*, 108 F.4th 931, 933 (7th Cir. July 23, 2024). A few months later, Judge Easterbrook repeated this call to action for the Supreme Court to decide the issue of “the propriety of incentive awards—and if, these awards even are proper, the Court needs to identify who pays (the class or the defendant).” *Jacks v. Directsat USA, LLC*, No. 23-3166, 2024 U.S. App. LEXIS 25099, at *27 (7th Cir. Oct. 3, 2024) (Easterbrook, J., concurring). On October 21, 2024, Defendants filed a Petition for Writ of Certiorari in the United States Supreme Court, attached hereto as Exhibit A, addressing Judge Easterbrook’s concerns.

Based on the acknowledged circuit split regarding whether federal courts have authority to grant incentive awards, and the Seventh Circuit’s decision that Scott has Article III standing to seek class certification under Rule 23 based solely on a possible incentive award, it is entirely plausible (and indeed probable) that the United States Supreme Court will grant a writ a certiorari. Accordingly, under both 28 U.S.C. § 2101(f) and this Court’s inherent power to stay its proceedings, Defendants request this Court enter an order staying the District Court proceedings until the Supreme Court rules on Defendants’ pending Petition.

ARGUMENT

I. Defendants filed their Petition for Writ of Certiorari on October 21, 2024.

On October 21, 2024, Defendants filed their Petition and posed the question of whether a putative class representative has Article III standing solely to seek an “incentive award” not authorized by statute, rule, or historic principles of equity. Based on the current Supreme Court docket, Scott’s response to the Petition is due on November 25, 2024. To date, no waiver has been filed. Defendants’ reply, in turn, is due within 14 days of the opposition, on December 9, 2024, with a ruling to issue shortly thereafter. Therefore, due to the upcoming deadlines, a short stay in these proceedings will not substantially harm Scott. If the Supreme Court chooses not to grant certiorari in this matter, its decision declining Defendants’ Petition is expected swiftly, and accordingly would not delay the resumption of this case unnecessarily. In contrast, if the Petition is taken up by the Supreme Court, that Court’s rulings could be dispositive, rendering any additional action by this Court a waste of judicial resources.

Notably, there is a similar petition involving the permissibility of incentive awards currently filed in the United States Supreme Court, where the Supreme Court has requested a response. *See Eric Alan Isaacson v. Meta Platforms, Inc., fka Facebook, Inc.*, 24-259. That response is currently due on December 20, 2024.

II. A stay of proceedings is warranted under 28 U.S.C. § 2101(f).

28 U.S.C. § 2101(f) provides that in any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. 28 U.S.C. § 2101(f). Three conditions must be met for a stay to be proper. First, there must be a reasonable probability that

certiorari will be granted (or probable jurisdiction noted). *Philip Morris USA, Inc. v. Scott*, 561 U.S. 1301, 1302 (2010) (Scalia, J. in chambers) (citing *Barnes v. E-Systems, Inc. v. Group Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J. in chambers)). Second, there must be a significant possibility that the judgment below will be reversed. *Id.* And third, assuming the applicant's position on the merits is correct, there must be a likelihood of irreparable harm if the judgment is not stayed. *Id.*

Here, with respect to the first *Philip Morris* factor, there is a reasonable probability that certiorari will be granted because there is an active circuit split on the issue of the permissibility of incentive awards. *Scott*, 108 F.4th at 932-933. Relatedly, Judge Easterbrook has now twice expressed serious concerns on the propriety of incentive awards, and he has specifically asked the Supreme Court to decide this issue. Finally, the Supreme Court has requested a response to a similar petition also challenging the legality of incentive awards, which does not occur with every petition filed. All these factors combined show that there is a strong possibility that certiorari will be granted as to the permissibility of incentive awards.

Second, there is a significant possibility that the judgment below will be reversed. No statute, provision in Rule 23, or historic principle of equity expressly authorizes incentive awards, and attributing incentive awards to Rule 23(e) calls into serious question whether that Rule is impermissibly substantive, rather than procedural, in violation of the requirements of the Rules Enabling Act. As Judge Easterbrook explained, the decision to give additional damages to one plaintiff is a task for legislators, not for judges seeking to implement "a judicially devised policy." *Scott*, 108 F.4th at 933. Due to the lack of authoritative power for courts to grant incentive awards, there is a strong likelihood that the judgment below by the Seventh Circuit will be reversed.

Third, there is a likelihood of irreparable harm if the judgment is not stayed. Should the

Supreme Court grant certiorari, its ultimate decision on this issue may dispose of this case, by clarifying that the Seventh Circuit lacked jurisdiction to consider Scott's appeal from this Court's judgment. Further litigation would thus cause Defendants irreparable harm, by forcing them to expend public resources continuing to litigate a case that should have ended with this Court's initial entry of judgment. Indeed, should the Supreme Court rule in Defendants' favor, Defendants, Plaintiff, and this Court will all have expended resources unnecessarily. As a result, all three *Philip Morris* factors weigh in favor of a stay.

III. The Court should use its inherent authority and stay these proceedings in the interests of justice.

Moreover, district courts have the inherent power to stay proceedings in the interests of justice. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cause of its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *see also Serlin v. Arthur Anderson & Co.*, 3 F.3d 221, 223 (7th Cir. 1993). Generally, a district court has the inherent power to stay proceedings in a case when the interests of justice require such an action. *Cruz v. Cty. of Dupage*, 1997 U.S. Dist. LEXIS 9220, 1997 WL 370194, at *1 (N.D. Ill. 1997). This includes the court's authority to manage its dockets and courtrooms with a view toward the efficient and expedient resolution of cases. *Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016).

In deciding whether to enter a stay, courts consider the following factors: (i) whether a stay will unduly prejudice or tactically disadvantage the non-moving party; (ii) whether a stay will simplify the issues in question and streamline the trial; and (iii) whether a stay will reduce the burden of litigation on the parties and on the court. *Pfizer Inc. v. Apotex Inc.*, 640 F. Supp. 2d 1006,

1007 (N.D. Ill. 2009). In other words, to order a stay of proceedings, it must be clear that the interests of justice require it, that adjudication of the claim would be a waste of judicial effort, and that the plaintiff will not be substantially harmed by the delay. *555 M Mfg., Inc. v. Calvin Klein, Inc.*, 13 F. Supp. 2d. 719, 724 (N.D. Ill. 1998).

Here, a short stay would not unduly prejudice or tactically disadvantage Scott. As of now, discovery is completed and has not been reopened. Defendants are only asking this Court to stay the proceedings until the Supreme Court rules on the Petition, which based on the current deadlines on the Supreme Court's docket, will likely result in a stay of a matter of weeks, not months. “[C]onsidering the relatively short amount of time anticipated to resolve the pending writ of certiorari, granting Defendants' stay is the more efficient procedure.” *See Peaceable Planet, Inc. v. Ty, Inc.*, 2004 U.S. Dist. LEXIS 13006, at *5 (N.D. Ill. 2004) (granting motion to stay pending petition for writ of certiorari filed in Supreme Court).

Second, a stay will undoubtedly simplify the issues in question, especially because this Court's Article III jurisdiction over Scott's claims is questioned, which creates a real possibility that any further adjudication of the claims while Defendants' Petition is pending would waste judicial effort and the parties' resources. Third, if the Supreme Court were to grant certiorari and reverse the Seventh Circuit's holding—that Scott has Article III standing and Rule 23(e) authorizes incentive awards—all expenses to continue litigating this case would be wasted, in addition to any judicial efforts undertaken by this Court to move the case forward. *See A.F. Moore & Assocs. v. Pappas*, 2020 U.S. Dist. LEXIS 257476, at *9 (N.D. Ill. 2020) (granting a motion to stay pending ruling on petition for certiorari filed in Supreme Court). This includes the Court's efforts in ruling on Scott's pending motion to add additional plaintiffs and amend the complaint, which is currently being briefed. (Dkt. 205.) Indeed, the denial of Defendants' request for a stay could conceivably

cause the parties and this Court to devote time and resources to issues that a Supreme Court ruling could render moot.

Therefore, a stay is warranted under the principles of fairness, in the interests of judicial economy, and to avoid burden that would be needlessly imposed on the parties and the Court were this litigation to proceed immediately.

CONCLUSION

For the foregoing reasons, this Court should grant Defendants' Motion to Stay Proceedings Pending Ruling on Defendants' Petition for Writ of Certiorari, including staying all current briefing schedules. The parties have conferred, and Plaintiff opposes this Motion. Per the Court's standing order, the parties propose the following briefing schedule: seven (7) days for Plaintiff to respond to Defendants' Motion to Stay; and (14) days for Defendants to reply in support of their Motion (due to the upcoming holiday).

Respectfully submitted,

KIMBERLY M. FOXX

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CERTIFICATE OF SERVICE

The foregoing Motion has been electronically filed on November 8, 2024. I certify that I have caused the foregoing Motion to be served on all counsel of record via CM/ECF electronic notice on November 8, 2024.

s/ Christina Faklis Adair
Christina Faklis Adair