

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

**PLAINTIFF'S RESPONSE TO
MOTION TO EXTEND TIME (ECF No. 215)**

For the reasons set out below, the Court should deny defendants' motion to extend to January 14, 2025 the time in which defendants may respond to plaintiff's motion to add additional plaintiffs (ECF No. 215), which was originally due on November 27, 2024. If defendants do not file their response by the present due date of December 10, 2024, plaintiff requests that the Court rule on plaintiff's motion to add additional plaintiffs (ECF No. 202) without further briefing.

1. Plaintiff filed the motion to add additional plaintiffs on October 16, 2024. (ECF No. 202.)
2. On October 24, 2024, the Court granted defendants 34 days, until November 27, 2024, to file their response to the motion. (ECF No. 205.) The Court subsequently granted defendants an additional 13 days (until December 10, 2024) to file that response. (ECF No. 212.)

3. On December 4, 2024, after denying defendant' motion to stay pending disposition of their petition for writ of certiorari, the Court reaffirmed the briefing schedule on the motion to add additional parties: “The briefing schedule on plaintiff's motion to add additional plaintiffs [212] stands.” (ECF No. 214.)

4. Shortly after the Court reaffirmed the briefing schedule, defendants filed the present motion, seeking until January 14, 2025 to respond to the motion to add additional plaintiffs. (ECF No. 215 at 4.)

5. Defendants acknowledge that an additional five weeks is “a long extension.” (ECF No. 215 at 3.) In fact, five weeks is more time than was provided in the original briefing schedule.

6. The Court should deny the motion because defendants have not shown any attempt to comply with the Court's scheduling order.

7. There is no indication in the motion that defense counsel has begun to work on the response to the motion to add additional plaintiffs.

8. The motion states that defense counsel has spent time “preparing a motion to dismiss in this case pursuant to Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction.” (ECF. No. 215, ¶ 8.) Any such motion would be a frivolous attempt to challenge the Seventh Circuit's mandate and should not have been afforded a priority over responding to the motion to add plaintiffs.

9. Defense counsel states that she was recently assigned to present three non-party witnesses at depositions. (ECF No. 215, ¶¶ 5-6.) Counsel does not describe any attempt to postpone those depositions while she attended to her responsibilities in this case. Nor does defense counsel, who “supervises fellow assistant state’s attorneys” (*Id.*, ¶7), state why she failed to delegate the deposition responsibility to a supervisee.

10. These matters and the other responsibilities outlined in the motion do not show good cause for yet another extension.

11. Plaintiff’s motion to add additional plaintiffs is a routine motion, repeatedly approved by the Seventh Circuit, most recently in *In re Allstate Corp. Securities Litigation*, 966 F.3d 595 (7th Cir. 2020) “to help resolve or avoid problems with another class representative.” *Id.* at 616.

12. This procedure has frequently been used by district judges in this circuit. *See, e.g., Lavender v. Driveline Retail Merchandising, Inc.*, 3:18-cv-2097, 2019 WL 4237848 (C.D. Ill. Sept. 6, 2019) (allowing new named plaintiff after defendant gave notice of its intent to challenge the original plaintiff); *In re Navistar MaxxForce Engines Mktg., Sales Practices, & Products Liab. Litig.*, 14-cv-10318, 2018 WL 316369 (N.D. Ill. Jan. 4, 2018) (allowing plaintiff to add a new class representative to the case while the class motion was pending).

13. The routine nature of plaintiff's request to add additional plaintiffs is illustrated in *Beringer v. Standard Parking Corp.*, 07-cv-5027, 2008 WL 4390626 (N.D. Ill. Sept. 24, 2008). There, the district judge (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.

The Court should therefore deny defendants' motion to extend to January 14, 2025, the time in which defendants may respond to plaintiff's motion to add additional plaintiffs.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
Joel A. Flaxman
200 S Michigan Ave
Chicago, IL 60604
(312) 427-3200
knf@kenlaw.com
an attorney for Plaintiffs