UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

RESPONSE IN OPPOSITION TO OPPOSED MOTION TO ADD ADDITIONAL PLAINTIFFS (Dkt. 202)

Defendants, Thomas J. Dart, Sheriff of Cook County, and Cook County, Illinois ("Defendants"), respond in opposition to Plaintiff, Quintin Scott's ("Scott") Opposed Motion to Add Additional Plaintiffs, Dkt. 202, as follows:

INTRODUCTION

Scott's motion to amend his complaint should be denied for three reasons. First, Scott has not even attempted to demonstrate the good cause required by Fed. R. Civ. P. 16(b) when, as here, a plaintiff seeks leave to amend his complaint after the deadline for doing so long expired on September 7, 2018. Dkt. 31. That forfeits any argument on that issue, requiring denial of his motion on that ground alone. Any attempt to show good cause would have been hopeless anyway, since that would require a showing of diligence, which is impossible to make out here given that over six years has passed since this Court set a deadline for Scott to amend his pleadings and add additional parties. Dkt. 31.

Second, Scott has not satisfied the separate requirements of Fed. R. Civ. P. 15. There has clearly been unreasonable delay here, given the six years that have passed since the deadline to amend. Defendants are unduly prejudiced by such a significant amendment at this late stage of the litigation. Over three years of extensive class discovery has been conducted, including multiple

depositions, in addition to the fact that the class certification issue with Scott as the named plaintiff has been briefed, ruled on by this Court, appealed, argued in front of the Seventh Circuit and now sent back to this Court for further review consistent with the Seventh Circuit's opinion. If this Court grants the instant motion and new prospective class representatives are added to the case and appointed, Defendants would be required to re-litigate key stages of this case and start from the beginning, which is not fair, especially for a case that has been pending for over seven years. Additionally, it would be futile to add these prospective class representatives because doing so cannot moot Defendants' pending petition for certiorari – which Scott admits elsewhere is his real goal for seeking leave to amend, Dkt. 209 at 6, no matter what he might claim in his motion. If Scott lacked standing to appeal, then the Seventh Circuit lacked jurisdiction to reverse this Court's original judgment in this matter, and that judgment in turn would render void *ab initio* any subsequent action taken, including a ruling adding plaintiffs to this case.

Third, Scott does not attach a complete proposed amended complaint, but instead attaches ten factual paragraphs he intends on adding to his prior complaint, which is not permitted.

For all these reasons, this Court should deny Scott's motion to amend in its entirety.

LEGAL STANDARD

A court uses a "two-step process" in evaluating a motion for leave to amend after the deadline to amend pleadings in the scheduling order has passed. *Alioto v. Town of Lisbon*, 651 F. 3d 715, 719 (7th Cir. 2011). At the first step, "the moving party *must* show 'good cause'" under Fed. R. Civ. P. 16(b). *Trustmark Insurance Co. v. General & Cologne Life Re of America*, 424 F.3d 542, 553 (7th Cir. 2005) (emphasis added). Rule 16(b)'s good cause standard primarily considers the diligence of the party seeking amendment. *See MAO-MSO Recovery II, LLC v. State Farm Mut. Auto Ins. Co.*, 9994 F.3d 869, 878 (7th Cir. 2021) (holding that district court did not abuse its discretion when plaintiff in class action case failed seek leave to amend for six months and deadline

to amend pleadings had passed). Only if good cause is shown does the Court then proceed to the second step and apply the ordinary Rule 15(a)(2) standard for amendments. *Alioto*, 651 F. 3d at 719. Under that rule, "district courts have broad discretion to deny leave to amend where there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to the defendants, or where the amendment would be futile." *Arreola v. Godinez*, 546 F.3d 788, 796 (7th Cir. 2008) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Prejudice to the opposing party is the most important factor in determining whether to allow an amendment to a complaint. *See Ameritech Corp. v. Computer Sys. Solutions, Inc.*, 188 F.R.D. 280, 283 (N.D. Ill. 1999) (denying motion for leave to file amended complaint because plaintiffs would have been substantially prejudiced by addition of class allegations when discovery already closed).

ARGUMENT

I. Scott Has Forfeited Any Argument That There Is Good Cause For A Six-Year-Late Amendment To His Complaint.

This Court can deny Scott's motion on the grounds of forfeiture alone. Nowhere in Scott's motion does he even acknowledge that the deadline to amend his complaint expired over six years ago, Dkt. 202, that his untimely motion to amend his complaint can be granted only if he can show good cause under Rule 16(b), *Alioto*, 651 F. 3d at 719, or that diligence is the touchstone of the good-cause inquiry, let alone explain how he could possibly have exercised diligence in bringing a motion to amend *six years* too late. That forfeits any argument on that subject. *See*, *e.g.*, *Riggins v. Walter*, 279 F.3d 422, 428 (7th Cir. 1995) (affirming denial of leave to file motion after scheduling deadline where movant failed to address good cause or diligence under Rule 16(b)) (citing *Sea-Land Services, Inc. v. D.I.C., Inc.*, 102 F.R.D. 252, 253-54 (S.D. Tex. 1984) (denying motion filed seven months after scheduling order deadline because "the Defendant offers the Court no explanation or showing of 'good cause'")); *Edmonson v. Desmond*, 551 F. App'x 280, 282 (7th Cir. 2014) (affirming denial of leave to amend under Rule 16(b) where plaintiff "has not offered

any reason, let alone a good one, why he waited more than a month after the close of discovery to file his motions to amend"); *Eastern Minerals & Chemicals Co. v. Mahan*, 225 F.3d 330, 340 (3d Cir. 2000) (affirming denial of untimely request for leave to amend where plaintiff offered no explanation why it could not have acted earlier); *Mabes v. McFeeley*, No. 1:21-cv-02062-JRS-MKK, 2023 U.S. Dist. LEXIS 123015, at *4 (S.D. Ind. May 1, 2023) ("The diligence required to amend a pleading pursuant to Rule 16(b) is not established if delay is shown and the movant provides no reason, or no good reason, for the delay.") (cleaned up); *Lavender v. Driveline Retail Merchandising, Inc.*, No. 3:18-CV-2097, 2019 U.S. Dist. LEXIS 151703, at *6 (C.D. Ill. Sep. 5, 2019) (holding that failure to "mention Rule 16" in regard to post-deadline amendment forfeited any argument regarding that rule).

A finding of forfeiture is particularly appropriate here, since Defendants cannot possibly formulate a meaningful response to an argument regarding good cause and diligence that Scott could not be bothered to make for himself. In fact, this Court could find that Scott intentionally waived, not merely forfeited, any argument regarding good cause, given that his counsel so conspicuously declines to address that subject despite being well aware that good cause is required – after all, this Court previously rejected his counsel's request for an amendment in another putative class action specifically because Rule 16(b)'s good-cause requirement was not satisfied. *See Elizarri v. Sheriff of Cook Cty.*, No. 17-cv-8120, 2022 U.S. Dist. LEXIS 44470, at *21-22 (N.D. Ill. Mar. 14, 2022).

None of Scott's proffered authority in support of amendment is to the contrary because – like Scott's motion – none addressed Rule 16(b)'s requirement that good cause be shown before allowing an untimely amendment. *Phillips v. Ford Motor Co.* addressed only the completely unrelated question "whether amending a complaint to add or substitute named plaintiffs (class representatives) 'commences' a new suit" for purposes of the Class Action Fairness Act. 435 F.3d

785, 786 (7th Cir. 2006). *In re Allstate Corp. Securities Litig.* involved another, similarly unrelated legal question whether "granting leave to amend" to add a new class representative is permitted when "the new class representative's claims are barred by the two-year statute of limitations." 966 F.3d 595, 614 (7th Cir. 2020). *Lavender*, as noted above, expressly declined to consider whether Rule 16(b)'s good-cause requirement had been satisfied because "Defendant does not mention Rule 16" and thus forfeited any argument on that issue. 2019 U.S. Dist. LEXIS 151703, at *6. Nor did *In re Navistar Maxxforce Engines Marketing, Sales Practices & Products Liability Litig.* address Rule 16(b), for the simple reason that "defendants said that they did not oppose the motion [to amend] 'per se' but asked the court to impose three conditions" on the amendment of the complaint. No. 14-cv-10318, 2018 U.S. Dist. LEXIS 1873, at *24 (N.D. Ill. Jan. 4, 2018). Finally, *Beringer v. Standard Parking Corp.* does not even involve a motion to amend, let alone any discussion of Rule 16(b), so it cannot be read to say anything about either. No. 07 C 5027, 2008 U.S. Dist. LEXIS 72873, at *9 (N.D. Ill. Sep. 24, 2008).

Faced with a motion that offers neither argument nor authority regarding the threshold question here – whether Rule 16(b)'s good-cause standard has been satisfied by a showing of diligence – this Court should deny Scott's motion on the ground that he forfeited any argument on that issue.

II. There Is No Good Cause Because Scott Cannot Possibly Claim His Reactive, Six-Year-Late Motion Was Brought Diligently.

Even if this Court forgives that fatal forfeiture, Scott cannot possibly show good cause here. According to Scott, he now wants to amend his complaint to add additional plaintiffs because he "expects defendants to argue that Scott is not an adequate class representative" and hopes "[t]o avoid expending resources litigating [the] legal question[]" of whether Scott is an adequate class representative after he accepted an offer of judgment based solely on a prospective incentive award. Dkt. 202 at 2-3. But Rule 16(b)'s diligence requirement is not satisfied by a movant's mere

belated desire to address problems in his case. In *Alioto*, for example, the plaintiff "argue[d] chiefly that he had no reason to know that his complaint was deficient until the defendants filed their motions to dismiss the complaint." 651 F.3d at 720. But the Seventh Circuit rejected that argument and affirmed the denial of leave to amend sought 8 months after the deadline to do so, explaining that the plaintiff's "explanation does not pass muster" because "[t]he requirements for surviving a motion to dismiss are matters of hornbook civil procedure law, and a party should *always* ask itself whether the complaint it wants to file sets out a viable claim." *Id.* (emphasis added).

The same is true here as it was in *Alioto*. The requirements for class certification are well known to Scott's counsel, who was obliged to always ask himself whether Scott continued to be an appropriate class representative, particularly since even a certified class can always be decertified if a problem arises with the class representative. That Scott's counsel is supposedly concerned that Scott's acceptance of an offer of judgment with Defendants might make him an inappropriate class representative says nothing about his diligence in fixing that problem, let alone explain why he did not buttress against that problem by recruiting new putative class plaintiffs years ago, before the deadline for doing so expired on September 7, 2018, Dkt. 31, or at the very least before accepting the offer of judgment on January 19, 2023, Dkt. 182, that he now fears will make him an inadequate class representative.

Even setting aside the reactive nature of Scott's motion, the sheer amount of delay here – over six years since the deadline to amend pleadings expired – shows a complete lack of diligence foreclosing a finding of good cause. This Court put it well in *Elizarri* when it rejected a roundabout attempt at amendment by Scott's counsel four years into a case for want of good cause:

> Litigation cannot go on forever. At some point, the target needs to stop moving. The Federal Rules contemplate the 'speedy' resolution of disputes. A lot of words come to mind when the Court thinks about adding a new claim four years after filing the case. 'Speedy' isn't one of them. The need for speed exists for a lot of compelling reasons. Never-ending amendments - long after deadlines have passed - drain the resources of the parties and the judiciary. It undermines public confidence in the judicial process, and interferes with the need for finality. Late-breaking amendments make it more difficult to resolve the case on the merits, too. Evidence does not improve with the passage of time. After years of litigation, memories fade. Witnesses forget key facts, or lose interest, or become unavailable. And jurors inevitably wonder what took so long, and why the case still matters. Extending a case imposes other costs, too. Everyone's time is zero sum, and a district court judge is no exception. Any time that a court spends on a case is less time that a court can spend on hundreds of other cases on his or her docket. The longer any case goes, the shorter the amount of time that a court can spend on everything else.

2022 U.S. Dist. LEXIS 44470, at *22-23 (cleaned up). The delay here is literally 50% greater than that at issue in *Elizarri*, and the lack of diligence demonstrated by that delay is only compounded by Scott's failure to engage with Rule 16(b) and show *any* efforts before October 2024 to add new putative class representatives right around the same time Defendants filed their petition for writ of certiorari in the Supreme Court. Given that conspicuous failing, this Court can only find that Scott exercised no diligence here, foreclosing a finding of good cause and his untimely amendment.

III. Scott Does Not Satisfy Rule 15's Standard for Amendment.

It would not matter had Scott shown good cause under Rule 16(b) anyway, because he also has not satisfied Fed. R. Civ. P. 15(a)(2)'s standard for amendment. The determination whether the Rule 15(a)(2) standard is met focuses primarily on whether there has been an unreasonable delay in seeking leave, whether amendment would cause undue prejudice to defendants, and whether the proposed amendment would be futile. *Arreola*, 546 F.3d at 796. As explained more fully below, Scott cannot satisfy any of the three requirements under Rule 15(a)(2) and thus, no amendment should be allowed.

A. Scott's Six-Year Delay Is Unreasonable.

Over six years have passed since this Court set a deadline for Scott to amend his pleadings and add additional parties. Dkt. 31. A six-year delay is categorically unreasonable, and no excuse engineered by Scott should save him. Although delay by itself is not sufficient to deny leave to amend, "the longer the delay, the greater the presumption against granting leave to amend." *King v. Cooke*, 26 F.3d 720, 723 (7th Cir. 1994) (internal citation omitted). Courts have suggested that motions to amend that are filed after the close of discovery in a case should be denied to avoid undue prejudice and delay. *See Sanders v. Venture Stores, Inc.*, 56 F.3d 771, 774 (7th Cir. 1995). The Seventh Circuit has held that the requisite diligence is not established if delay is shown and the movant provides no reason, or no good reason, for the delay. *See Alioto*, 651 F.3d at 719; *Edmonson*, 551 F. App'x at 282 (finding delay where more than three months had passed since the opposing party answered, and deadlines for discovery and dispositive motions had passed); *Carroll v. Stryker Corp.*, 658 F.3d 675, 684 (7th Cir. 2011) (finding delay seven months after deadline for amending pleadings passed and less than a month before the close of discovery).

Scott does not provide any excuse for why he has waited this long to ask to add these plaintiffs. That alone should be enough for this Court to deny Scott's motion. Additionally, this is not Scott's first request to amend his complaint. Back in July 2018, Scott filed his first amended complaint. Dkt. 30. Approximately three years of discovery occurred prior to Scott filing his motion for class certification, but only now does Scott seek an additional amendment. Dkt. 129. Moreover, the allegations Scott attempts to include in his proposed amendment for the new plaintiffs are from 2017, when those proposed new plaintiffs were detainees at the Cook County Jail. Dkt. 202 at 6-8. That means that these proposed plaintiffs and claims have been known to Scott for over seven years, yet Scott provides no explanation, let alone a good reason, for his delay

in adding them to this action. Therefore, there is an unreasonable delay in Scott seeking leave to amend his complaint.

B. Defendants Are Unduly Prejudiced.

In addition to the serious delay of over six years since the deadline to amend his pleadings, Scott's request to add additional parties and propose them as the new class representatives unduly prejudices Defendants. Dkt. 202 at 3. This is the most important factor. *See Ameritech Corp.*, 188 F.R.D. at 283. "Virtually every amendment results in some degree of prejudice to an opposing party because of the potential for additional discovery and trial delay." *Id*. Undue prejudice occurs when the amendment "brings entirely new and separate claims, adds new parties, or at least entails more than an alternative claim or a change in the allegations of the complaint" and when the additional discovery is expensive and time-consuming. *Id*. Prejudice is more likely when an amendment comes late in the litigation and will drive the proceedings in a new direction. *See Allen v. Brown Advisory, LLC*, 41 F. 4th 843, 853 (7th Cir. 2022) (affirming denial of motion to amend); *McCoy v. Iberdrola Renewables, Inc.*, 760 F.3d 674, 687 (7th Cir. 2014) (affirming denial of motion to amend brought at a late stage that introduced new theories of liability); *Johnson v. Cypress Hill*, 641 F.3d 867, 872-73 (7th Cir. 2011) (similar).

Here, the stage of litigation is clearly advanced. Years of class discovery have been conducted. The length of time between these putative plaintiff class representatives' motion and their knowledge of their interest from allegations in 2017 is vast. *Cf. China Agritech, Inc. v. Resh*, 138 S. Ct. 1800, 1810-11 (2018) (instructing would-be class representatives not to wait to file). This delay, in turn, unduly prejudices Defendants by requiring them to re-litigate key stages of this case and will drive the proceedings in new directions. For example, allowing Scott to add additional plaintiffs would require Defendants at the very least to revert to the pleadings stage, then reengage in both written and oral discovery, including multiple depositions, and rebrief their

opposition to class certification with these new plaintiffs as the representative parties if the Court later permits Scott to file a new class motion, all of which would create significant additional expense and time for Defendants. Defendants would then have to wait for the Court to rule on whether the new parties adequately represented the class and whether they were similarly situated to the other proposed class members. For a case filed in 2017, this is the exact opposite of a "speedy" resolution of a dispute, as required under Fed. R. Civ. P. 1 and precisely the definition of undue prejudice.

And as the *Elizzari* court noted, quoted above, Defendants are further prejudiced by the fact that memories fade; witnesses forget key facts, lose interest, or become unavailable; documents are lost or destroyed; jurors are tainted by wondering why the case is still pending; and finality is sacrificed as resources spent on one theory of the case now wasted, and new resources need to be spent litigating new theories. All of those are very real ways Defendants are prejudiced here if Scott's motion is granted. Put simply, Scott has filed this motion too late, and Defendants would be unduly prejudiced if he is allowed to amend this late in the litigation.

C. Scott's Amendment Is Futile.

Scott's attempt to add additional plaintiffs as class representatives is futile because it will not advance his actual goal here: to "overcome any argument that there isn't a person with a live claim before the court" and "moot" Defendants' pending petition for certiorari. *See* November 25, 2024 Court Transcript, attached hereto as Exhibit A; Dkt. 209 at 6. Because Scott was the only person who sought appellate review, the fate of that appeal – and thus this Court's jurisdiction to take any further action in this case after entering the judgment taken up on that appeal – turns on *his* standing, not on the standing of some other person who waited for years to intervene in the litigation. The Supreme Court has made clear that standing is not dispensed in gross, *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996), so the fact that *other* potential plaintiffs might have had

standing to carry on this class litigation had they intervened years ago cannot confer on *Scott*'s personal standing necessary to appeal.

Thus, if the Supreme Court determines that Scott lacked standing to appeal, that means it is already too late for him to supply new plaintiffs who supposedly have standing to pursue this litigation. Rather Scott's entire Seventh Circuit appeal would be declared void *ab initio*, leaving only the judgment as it stood before that appeal. That, in turn, would require this Court to vacate any orders adding new plaintiffs or taking any other action in this case on remand from the Seventh Circuit.[1] As a general matter, once a district court enters final judgment in a case, "it lacks jurisdiction to continue hearing related issues." *United States v. Campbell*, 324 F.3d 497, 500 (7th Cir. 2003) (citing *Carlisle v. United States*, 517 U.S. 416 (1996)); *see Eaton v. United States*, 178 F.3d 902, 903 (7th Cir. 1999) (holding that district court "had no jurisdiction to consider [a] motion" filed after entry of judgment). That rule applies with particular force to Scott's attempt to amend his complaint to add additional named plaintiffs because the Seventh Circuit has made clear that a complaint may not be amended while a final judgment remains in place, because entry of that judgment means "there is nothing pending before the court to amend." *Johnson v. Levy Organization Development Co.*, 789 F.2d 601, 611 (7th Cir. 1986); *accord*, *e.g.*, *Pena v. Mattox*, 84 F.3d 894, 903 (7th Cir. 1996) ("The suit is over. There is no complaint to amend."). For these reasons, adding new plaintiffs as class representatives would be futile to resolve Scott's serious standing issues.

[1] The risk of such an unnecessary expenditure of judicial resources is why Defendants previously asked to stay the district court proceedings until after the Supreme Court has ruled on the pending petition for certiorari. Dkt. 206.

IV. Scott Did Not Attach a Complete Proposed Amended Complaint to His Motion to Amend.

Finally, this Court should deny Scott's motion to amend his complaint because he failed to attach a complete proposed amended complaint to the motion to amend. Instead, Scott attaches an "Amendment to Amended Complaint," Dkt. 202 at 6-8. This "Amendment" is simply ten new factual paragraphs that Scott claims amends his prior amended complaint. However, such an "Amendment to Amended Complaint" is improper because Scott must attach a complete proposed amended complaint that, if granted leave to file, will completely replace his original complaint and will stand on its own without reference to or reliance upon his original complaint. *See Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 638 n. 1 (7th Cir. 2004); *see also Cobian v. McLaughlin*, No. 14-1218-SEM-TSH, 2018 U.S. Dist. LEXIS 28749, at *2-3 (C.D. Ill. Jan. 10, 2018) (no piecemeal amendments to pleadings permitted). "A litigant may not amend a complaint in a piecemeal fashion (often referred to as amendment by interlineation), as [Scott] has attempted to do so here. Consistent with Federal Rule of Civil Procedure 8(a), amendment by interlineation is not permitted. Instead, all claims against all defendants must be set forth in a single document." *Tedrick v. Fayette Cty. Jail*, No. 17-cv-1031-JPG, 2017 U.S. Dist. LEXIS 166110, at *2 (S.D. Ill. Oct. 6, 2017) (denying motion to amend because plaintiff's claims could not stand on their own without reference to prior pleading).

Here, Scott's "Amendment to Amended Complaint" does not stand on its own without reference to his prior amended complaint. Scott's piecemeal attempt, or amendment by interlineation, is improper because all of his claims are not set forth in one single document. Therefore, this Court should deny his motion to amend because he failed to attach a complete proposed amended complaint to his motion to amend.

CONCLUSION

For the foregoing reasons, this Court should deny Scott's Opposed Motion to Add Additional Plaintiffs, Dkt. 202, in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing Response has been electronically filed on January 14, 2025. I certify that I have caused the foregoing Response to be served on all counsel of record via CM/ECF electronic notice on January 14 2025.

s/ *Christina Faklis Adair*
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