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.	)	

DEFENDANTS' OPPOSED MOTION FOR LEAVE TO FILE A SUR-REPLY BRIEF

Defendants, Thomas J. Dart, Sheriff of Cook County, and Cook County, Illinois ("Defendants"), request leave to file a sur-reply to Plaintiff Quintin Scott's ("Scott") Opposed Motion to Add Additional Plaintiffs, Dkt. 202:

I. Background.

1. On October 16, 2024, Scott filed his Opposed Motion to Add Additional Plaintiffs and File Amendment to Complaint, Dkt. 202.

2. Per the Court's briefing schedule, Dkt. 218, on January 14, 2025, Defendants filed their response brief in opposition to Plaintiff's Opposed Motion to Add Additional Plaintiffs and File Amendment to Complaint, Dkt. 220. In that response, Defendants observed that Scott's motion to amend was filed six years past the date set by this Court's scheduling order, requiring a showing of good cause to amend in addition to the normal showing necessary when not amending a complaint as a matter of right. Dkt. 220 at 2-5. Defendants further noted that Scott ignored this requirement, explaining that this resulted in either a forfeiture or an outright waiver of any argument regarding good cause because offering such an argument for the first time in a reply would seriously prejudice Defendants by denying them a fair opportunity to respond in writing. Dkt. 220 at 3-5.

3. On January 21, 2025, Scott filed his reply brief in support of his Opposed Motion to Add Additional Plaintiffs and File Amendment to Complaint, Dkt. 221. In that reply, Scott does not dispute that his grossly overdue motion is governed by Rule 16(b) and thus cannot be granted absent a showing of good cause, nor does he dispute that he forfeited/waived that issue by simply ignoring it in his motion despite being well aware of Rule 16(b)'s requirements. Rather, he argues, for the first time, that good cause exists because he suspects Defendants will challenge Scott's adequacy as a class representative, claiming that *Randall v. Rolls-Royce Corp.*, 637 F.3d 818 (7th Cir. 2011) and *Lukis v. Whitepages Inc.*, 535 F. Supp. 3d 775 (N.D. Ill. 2021) – neither of which were cited in his motion to amend – support this argument. Dkt. 221 at 2.

II. Argument.

4. Scott's attempt to sandbag Defendants by saving until his reply any argument regarding good cause strongly warrants a sur-reply, to mitigate the prejudice that will result if this Court considers that argument without allowing Defendants an opportunity to respond in writing. "The decision whether to grant a motion for leave to file a sur-reply is within the Court's discretion." *Univ. Healthsystem Consortium v. UnitedHealth Grp., Inc.*, 68 F. Supp 3d 917, 922 (N.D. Ill. 2014) (stating that sur-replies may be appropriate when new claims are raised in a reply brief) (citing *Johnny Blastoff, Inc. v. L.A. Rams Football Co.*, 188 F.3d 427, 439 (7th Cir. 1999)).

5. Regarding the exercise of that discretion here, it is well settled that arguments raised for the first time or first developed in a reply brief are deemed waived. *See Dexia Credit Local v. Rogan*, 629 F.3d 612, 625 (7th Cir. 2010); *Hess v. Reg-Ellen Mach. Tool Corp.*, 423 F.3d 653, 665 (7th Cir. 2005). It is also recognized that "allowing the filing of a surreply 'vouchsafes the aggrieved party's right to be heard and provides the court with the information necessary to make an informed decision.'" *Univ. Healthsystem Consortium*, 68 F. Supp. at 922 (quoting *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D 320, 329 (N.D. Ill. 2005)); *see also Franek v. Walmart*

Stores, Inc., 2009 U.S. Dist. LEXIS 20361, 2009 WL 674269, at *19 n.14 (N.D. Ill. Mar. 13, 2009) (recognizing that a surreply might be appropriate "when a moving party 'sandbags' an adversary by raising new arguments in a reply brief").

6. Here, Scott's reply raises new arguments not in his original motion. More specifically, Scott includes two cases, *Randall* and *Lukis*, to support his new argument that "[t]he timeliness of a motion to add plaintiffs to a putative class action is measured from the date 'a substantial challenge to certification is made.'" Dkt. 221 at 1-2. Such "sandbag[ging]" behavior of including new arguments in a reply brief should not be permitted. *See Franek*, 2009 U.S. Dist. LEXIS 20361, at *19 n.14.

7. Scott misrepresents the Seventh Circuit's decision in *Randall* by neglecting to mention that *Randall* did not involve the existence of good cause for an untimely motion to amend – indeed, it did not even mention Rule 16(b) – but rather involved a motion to intervene under Fed. R. Civ. P. 24(b)(3). Scott does not claim that intervention is appropriate under that rule, forfeiting that issue. Furthermore, Scott fails to mention that *Randall* affirmed the denial of leave to intervene as untimely. 637 F.3d at 827

8. Scott compounds those misleading omissions by offering only an out-of-context snippet of the following passage:

> It would *go too far to suggest* that unless substitution for the original named plaintiffs is sought as soon as a substantial challenge to certification is made, *the district court is justified in denying it.* Such a rule might involve constant interruptions of the proceeding—procedural hiccups—as nervous class action counsel tried to add new class representatives every time the defendants raised an objection to certification. But it was obvious from the outset that these named plaintiffs faced a serious challenge to their status as class representatives. And with the entire class in one location (a single plant in Indiana), class counsel had ample opportunity to sift through potential named plaintiffs before deciding on Randall and Pepmeier. *Intervention* shouldn't be allowed just to give class action lawyers multiple bites at the certification apple, when they have chosen, as should have been obvious from the start, patently

> inappropriate candidates to be the class representatives. The judge was justified in denying *the motion to intervene*.

Randall, 637 F.3d at 827 (citations omitted; emphases added).

9. Similarly, Scott neglects to mention that *Lukis* also did not involve or even discuss Fed. R. Civ. P. 16(b), because the plaintiff moved for leave to amend less than two weeks after the defendant moved to compel arbitration of her claims. 535 F. Supp. 3d at 793. As a result, *Lukis* only applied the ordinary standard applicable to amendments of complaints.

10. That Scott used his reply not only to make new arguments, but to also misrepresent the authority on which he relies in making those new arguments, causes significant prejudice to Defendants, making a sur-reply appropriate if this Court declines to hold those new arguments forfeited. Accordingly, Defendants request that this Court grant them leave to file a sur-reply within 21 days, to allow Defendants reasonable time to complete their reply in support of their petition for certiorari in the United States Supreme Court, which is due early next week. In the alternative, if this Court concludes that a separate sur-reply is unnecessary, Defendants respectfully ask that it accept this motion as a sur-reply, in order to preserve Defendants' arguments regarding *Randall* and *Lukis*.

WHEREFORE, Defendants request leave to file a sur-reply brief. Should this Court grant Defendants leave to file a sur-reply brief, Defendants request twenty-one (21) days to file their sur-reply brief to respond to the newly raised arguments and misrepresentations in Scott's reply brief. In the alternative, if this Court declines to allow a separate sur-reply, Defendants request that this Court accept this motion as their sur-reply, for the purpose of preserving Defendants' arguments regarding *Randall* and *Lukis*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing Motion has been electronically filed on January 23, 2025. I certify that I have caused the foregoing Motion to be served on all counsel of record via CM/ECF electronic notice on January 23, 2025.

s/ *Christina Faklis Adair*
Christina Faklis Adair