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

Montrell Carr, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 17-cv-7135
-vs-	)	
	)	
Sheriff of Cook County and Cook County, Illinois,	)	*(Judge Pacold)*
	)	
	)	*(Magistrate Judge Weisman)*
Defendants.	)	

PLAINTIFF'S RESPONSE TO MOTION FOR LEAVE TO FILE A SURREPLY (ECF No. 222)

Following remand from the Seventh Circuit, plaintiff sought to add additional plaintiffs in response to a legal argument raised by defendants for the first time on appeal. (ECF No. 202.) Defendants asked the Court to deny the motion as untimely, arguing that plaintiff should have filed the motion before September 7, 2018, the deadline set in the original case management order to add additional plaintiffs. (ECF No. 220.) Plaintiff answered the timeliness objection in his reply memorandum. (ECF No. 221.)

Defendants now ask the Court for leave to file a surreply, asserting that plaintiff's response to their timeliness objection was improper. (ECF No. 222 at 2.) Defendants are mistaken.

The Seventh Circuit squarely rejected the argument raised by defendants in *Hardrick v. City of Bolingbrook*, 522 F.3d 758 (7th Cir. 2008) and again in *Bell v. DaimlerChrysler Corp.*, 547 F.3d 796 (7th Cir. 2008).

The plaintiff in *Hardrick* argued that the district court should not have considered an argument the defendant raised for the first time in their reply brief. *Hardrick*, 522 F.3d at 763. The Court of Appeals rejected that argument, holding that "the defendants were properly responding in their reply brief to a theory of the case that Hardrick asserted in response to defendants' motion for summary judgment." *Id.*.

The Seventh Circuit reaffirmed *Hardrick* in *Bell v. DaimlerChrysler Corp.*, 547 F.3d 796 (7th Cir. 2008). There, the defendant raised the argument that the Court of Appeals had rejected in *Hardrick*. *Id.* at 806. The Court of Appeals again rejected the argument, holding that a party may include in a reply an argument that is "a natural and reasonable response to what the [opposing party] had argued in their memorandum in opposition to the motion []." *Id.*.

Plaintiff's reply memorandum in this case included arguments that were "a natural and reasonable response" to the arguments defendants raised in their response. Defendants argued that the motion to add additional plaintiffs is untimely; plaintiff responded by showing that he moved promptly to add additional plaintiffs and that the timeliness of a motion to add plaintiffs to a putative class action is measured from the date "a substantial challenge to certification is made." *Randall v. Rolls-Royce Corp.*, 637 F.3d 818, 827 (7th Cir. 2011).

Accordingly, the Court should reject defendants' arguments and apply the well-established rule that, "in a reply brief, an appellant generally may respond to arguments raised for the first time in the appellee's brief." *Loja v. Main St. Acquisition Corp.*, 906 F.3d 680, 684 (7th Cir. 2018).

Defendants' other arguments do not demonstrate the need to file a sur-reply. The Seventh Circuit has stated that "surreply briefs are rare and discouraged in most districts." *Ennin v. CNH Indus. Am., LLC*, 878 F.3d 590, 596 (7th Cir. 2017). Freely allowing parties to file surreply briefs means that "arguments before the district court would proceed ad infinitum making litigation unruly and cumbersome." *Hardrick v. City of Bolingbrook*, 522 F.3d 758, 763 n.1 (7th Cir. 2008). The concern for unruly and cumbersome litigation is heightened in this case because defendants have not yet submitted their proposed sur-reply; they seek an additional 21 days to file yet another brief. (ECF No. 222 at 4.) This means that more than four months will likely pass before a routine motion filed on October 16, 2024 is fully briefed.

At bottom, the answer to defendants' arguments is made plain on this Court's webpage discussing motions to strike:

> The Court is capable of discerning if a new argument has been raised in a reply brief.

https://www.ilnd.uscourts.gov/judge-cmp-detail.aspx?cmpid=1114, Webpage of Judge Martha M. Pacold, Motions to Strike.

The Court should deny the motion for leave to file a surreply.

Respectfully submitted,

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