

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

Leoncio Elizarrri, by his Special)	
Administrator Leticia Perez, and)	
Gregory L. Jordan, individually)	
and for others similarly situated,)	
)	
<i>Plaintiffs,</i>)	
)	No. 17-cv-8120
<i>-vs-</i>)	
)	(Judge Seeger)
Sheriff of Cook County and Cook)	
County, Illinois,)	
)	
<i>Defendants.</i>)	

**MOTION TO FILE AMENDED COMPLAINT
AND TO ADD PLAINTIFF**

Plaintiffs, by counsel, moves the Court for leave to file a second amended complaint and, pursuant to Rule 21 of the Federal Rules of Civil Procedure, to add Ted Velleff as an additional plaintiff.

Grounds for this motion are as follows:

1. In its order of November 16, 2020 (ECF No. 129), the Court raised the question of whether the named plaintiffs could be adequate class representatives. The Supreme Court reserved this question in *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 405-07 (1980); the answer provided by the Seventh Circuit is to treat as “an unexceptionable (‘routine’) feature of class action litigation” the “[s]ubstitution of unnamed class members for

named plaintiffs who fall out of the case because of settlement or other reasons.” *Phillips v. Ford Motor Co.*, 435 F.3d 785, 787 (7th Cir.2006) (citations omitted).

2. As another district judge observed, “the Seventh Circuit has long and repeatedly held that if a named plaintiff falls short as a class representative, counsel should be allowed, if it can, to designate a new named plaintiff who better fits the bill.” *Mervyn v. Nelson Westerberg, Inc.*, No. 11 C 6594, 2016 WL 1270416, at *10 (N.D. Ill. Mar. 31, 2016); *see also In re Navistar MaxxForce Engines Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 14-CV-10318, 2018 WL 316369, at *2 (N.D. Ill. Jan. 4, 2018); *Elizarri v. Sheriff of Cook County*, No. 07 C 2427, 2011 WL 247288, at *3 (N.D. Ill. Jan. 24, 2011); *Searcy v. eFunds Corp.*, No. 08 C 985, 2010 WL 1337684, at *2 (N.D. Ill. Mar. 31, 2010).

3. The proposed amended complaint therefore adds Ted Velleff, a former detainee at the Jail, as a plaintiff to ensure that the putative class will be adequately represented.

4. The second amended complaint also adds allegations arising from new facts disclosed by the Sheriff on September 28, 2020. Before that date, the Sheriff had stated in sworn interrogatory answers that the Jail was

not destroying the property of detainees who had left the Jail. The Sheriff's office revealed for the first time on September 28, 2020 that it had in fact begun to dispose of detainee property as of late 2018. The Sheriff also revealed that the number of stored property bags had decreased from more than 57,000 in 2011 to about 5,000.

5. The proposed second amended complaint also adds clarity to the Fifth Amendment Takings claim, which was not available until the decision of the Supreme Court in *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019).

6. Plaintiff attaches the proposed second amended complaint and a redline version showing the changes.

Respectfully submitted,

/s/ Kenneth N. Flaxman
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