

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

Leoncio Elizarri and Gregory L.)
Jordan, individually and for)
others similarly situated,)
)
Plaintiffs,)
) No. 17-cv-8120
-vs-)
) (Judge Seeger)
Sheriff of Cook County and Cook)
County, Illinois,)
)
Defendants.)

PROTECTIVE MOTION FOR CLASS CERTIFICATION

Pursuant to *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011), plaintiffs move the Court to order that this case proceed as a class action for the following subclasses:

- a) Fifth Amendment Takings Subclass: All persons who left the Cook County Jail to serve a sentence in the Illinois Department of Corrections on and after November 9, 2015 and whose clothing was taken by the Sheriff to be used by detainees upon release from the Cook County Jail.
- b) Fourteenth Amendment Damages Subclasses: All persons transferred to the Illinois Department of Corrections from the Cook County Jail
 - i. whose government issued identification card or cards remained in the custody of the Sheriff of Cook County on and after November 9, 2015, and
 - ii. whose property remained in the custody of the Sheriff of Cook County and was sold, destroyed, or lost on and after November 9, 2015.

- c) Fourteenth Amendment Equitable Relief Subclass: All persons transferred to the Illinois Department of Corrections from the Cook County Jail whose property remains in the custody of the Sheriff of Cook County.

Grounds for this motion are as follows:

1. Defendant Sheriff is seeking to return property belonging to plaintiff Velleff that remains in the Sheriff's custody
2. Plaintiffs anticipate that the Sheriff will argue that the return of the property moots the class claim for prospective injunctive relief.
3. The Seventh Circuit identified a procedure for plaintiffs to maintain the viability of their class claim in *Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011): "A simple solution to the buy-off problem that Damasco identifies is available, and it does not require us to forge a new rule that runs afoul of Article III: Class-action plaintiffs can move to certify the class at the same time that they file their complaint." *Id.* at 896.
4. Plaintiff notes that the Court of Appeals overruled *Damasco* in *Chapman v. First Index, Inc.*, 796 F.3d 783 (7th Cir. 2015) but, as one judge in this district has recognized, *Damasco* may "have become relevant again due to dicta in the Supreme Court's decision in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 672 (2016) ('We need not, and do not, now decide whether the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and

the court then enters judgment for the plaintiff in that amount.’) Webpage of Judge Thomas M. Durkin, Class Certificate ion Motions, available at <https://www.ilnd.uscourts.gov/judge-cmp-detail.aspx?cmpid=964>.

5. Plaintiffs therefore file this protective motion for class certification and requests that the Court stay briefing on this motion until after the close of fact discovery on September 30, 2021.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 South Michigan Ave Ste 201
Chicago, Illinois 60604
(312) 427-3200
Attorneys for Plaintiffs