

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

Leoncio Elizarri, et al.

Plaintiff,

v.

Case No.: 1:17-cv-08120
Honorable Steven C. Seeger

Sheriff of Cook County, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, November 16, 2020:

MINUTE entry before the Honorable Steven C. Seeger: The motion for class certification (Dckt. No. [92]) is hereby denied without prejudice. During the hearing on December 6, 2019, the parties agreed to complete additional discovery before Defendants would respond to the motion. See 12/6/19 Tr; 12/6/19 Order (Dckt. No. [96]). The Court later stayed discovery, and held the motion for class certification in abeyance, in light of ongoing settlement negotiations. (Dckt. Nos. [105], [117]) The parties recently completed a settlement conference but did not settle. (Dckt. No. [125]) The landscape of the case has changed, perhaps materially, since Plaintiffs filed the motion for class certification. Plaintiffs requested certification of a class of "[a]ll 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." Id. But in recent months, Defendants have returned all of the property belonging to the named Plaintiffs. (Dckt. Nos. [95], [97], [121], [127]) On October 28, 2020, the parties filed a Joint Status Report and confirmed that "Defendants have returned all the property belonging to the named plaintiffs." (Dckt. No. [127]) The return of the property raises the question whether the named Plaintiffs could be adequate class representatives. A named plaintiff must be a member of the class to be the class representative. That rule comes from the text of Rule 23(a) itself. "One or more members of a class may sue or be sued as representative parties on behalf of all members...." See Fed. R. Civ. P. 23(a); see also Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 348 (2011) ("[A] class representative must be part of the class...."); Sali v. Corona Regional Med. Ctr., 909 F.3d 996, 1007 (9th Cir. 2018) ("A named plaintiff must be a member of the class she seeks to represent...."); James Wm. Moore, et al., Moore's Federal Practice § 23.21[2] (3d ed. 1999) ("For a class action to proceed, the court must apply the class definition to each proposed class representative and find that the class representative is a member of that class."). The Joint Status Report also revealed that "Plaintiffs may also seek to amend the operative complaint (and add additional plaintiffs)." (Dckt. No. [127]) By November 23, 2020, the parties must meet and confer and propose a schedule for the balance of the case, including deadlines for the filing of an amended complaint (if any), a motion for class certification, and dispositive motions. This Order does not, in and of itself, grant leave to file an amended complaint. Instead, the Court is simply requiring a proposed schedule with a deadline to seek leave to file an amended complaint. The proposed schedule must assume that the fact discovery deadline of January 29, 2021

(Dckt. No. [128]) will remain in place. Mailed notice. (jjr,)

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