

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

Khalid Ali, )  
 )  
 Plaintiff, )  
 ) No. 19-cv-00022  
 -vs- )  
 )  
 City of Chicago, et al., ) (Judge Chang)  
 )  
 Defendants. )

## **PETITION TO INTERVENE**

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, petitioner Glenn Miller seeks leave to intervene for the sole purpose of prosecuting an appeal against defendant City of Chicago to secure appellate review of the district court's rulings denying the attempts of the original plaintiff to prosecute this case as a class action.

Grounds for this petition are as follows:

1. On January 29, 2020, the Court concluded that plaintiff Ali could not seek certification of the case as a class action because he had not provided defendant City of Chicago with advance notice of his intent to sue as a class representative. (ECF No. 59.)

2. Plaintiff Ali unsuccessfully sought interlocutory review of the Court's order of January 29, 2020; the Court of Appeals denied Ali's Rule 23(f) petition for permission to appeal on February 12, 2020, 7th Cir. Case No. 20-8002.

3. That same day, plaintiff Ali filed a motion for leave to file an amended complaint. (ECF No. 62.) Ali alleged in his proposed amended complaint (ECF No. 62-1) that he was bringing the case individually and for a putative class. (Proposed Amended Complaint, ¶ 39, ECF No. 62-1 at 3-4).

4. The Court denied Ali leave to amend on November 30, 2020 as part of its ruling on the motion for summary judgment of the individual defendants. (ECF No. 103.)

5. Plaintiff Ali settled his claim and signed a written settlement agreement on January 20, 2021. The settlement agreement does not permit Ali to appeal the order denying class certification. *Cf. Espenscheid v. DirectdSat USA, LLC*, 688 F.3d 872 (7th Cir. 2012) (named plaintiff may settle individual claims and appeal order denying class certification on a showing that they possess a stake in the outcome of the appeal).

6. The parties filed a stipulation to dismiss on January 25, 2021 (ECF No. 108), and the Court entered an order of dismissal on January 25, 2021. (ECF No. 109.)

7. Petitioner seeks to intervene now that “it is clear that the class representative is not planning to appeal the denial of class certification.” *Roe v. Town of Highland*, 909 F.2d 1097, 1099 (7th Cir. 1990); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (intervention after judgment was timely where intervenor wanted only to appeal).

8. The Supreme Court upheld post-judgment intervention to appeal the denial of class certification in *United Airlines, Inc. v. McDonald*, 432 U.S. 385 (1977). As construed by the Seventh Circuit in *Roe v. Town of Highland*, 909 F.2d 1097 (7th Cir. 1990) and *Larson v. JPMorgan Chase & Co.*, 530 F.3d 578 (7th Cir. 2008), “the *general* rule is that the member of a shadow class can delay filing his motion to intervene to appeal the denial of certification of his class until the final judgment is entered.” *Larson*, 530 F.3d at 583 (emphasis in original).

9. The general rule is applicable in this case because, until defendants agreed to a monetary settlement with plaintiff Ali, members of the putative class reasonably expected Ali to seek appellate review of the Court’s rulings that the case could not proceed as a class action.

10. As in *Romasanta v. United Airlines, Inc.*, 537 F.2d 915 (7th Cir. 1976), the case affirmed by the Supreme Court *sub nom United Airlines, Inc. v. McDonald*, 432 U.S. 385 (1977), intervention would not prejudice the rights of the original parties because defendant City of Chicago knew of its potential liability to the putative class when plaintiff Ali filed his motion for class certification. In addition, defendant “could not have assumed that, if it won in the district court, there would be no appeal.” *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 573 (7th Cir. 2009).

11. Petitioner Glenn Miller is a member of the class plaintiff Ali sought to represent in this case:

- a. Petitioner was arrested on or about January 18, 2018 by Chicago police officers on a warrant issued by a judge of the State of Illinois for which the judge had set an amount of cash bail;
- b. Petitioner was not permitted to post bond at the police station because of the written policy challenged by plaintiff Ali, and
- c. Petitioner was released on January 19, 2018 following an appearance before a judge of the Circuit Court of Cook County without being held at the Cook County Jail.

12. Petitioner Miller would have been a member of the class Ali sought to represent against defendant City of Chicago: the proposed starting date for that class was January 1, 2017, two years before Ali filed this action. An order allowing the case to proceed as a class action would relate back to the filing of this action. *Paskuly v. Marshall Field & Co.*, 646 F.2d 1210 (7th Cir. 1981) and *Anderson v. Montgomery Ward & Co.*, 852 F.2d 1008 (7th Cir. 1988). In each of these cases, the plaintiff filed an amended complaint seeking to transform the case into a class action. *Paskuly*, 646 F.2d at 1211; *Anderson*, 852 F.2d at 1018. In each case, the Seventh Circuit held that the amended complaint related back to the date of the original complaint. *Id.*

13. Petitioner does not seek to appeal any part of the case related to the individual defendants.

14. Petitioner's claim and the main action present a common question: the legality of the challenged municipal policy. Intervention is therefore appropriate under Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure.

15. Petitioning-intervenor attaches his proposed pleading, a notice of appeal, to this motion, in compliance with Federal Rule of Civil Procedure 24(c).

16. Pursuant to *CE Design, Ltd. v. Cy's Crab House North, Inc.*, 731 F.3d 725 (7th Cir. 2013), petitioner respectfully requests the Court to rule on this motion within 30 days after entry of the order of dismissal. If the Court is unable to rule within that period, petitioner requests that the Court "enlarge the time for filing an appeal (up to 30 days), as permitted to FED. R. APP. P. 4(a)(5)." *Id.* at 728 (quoting *Roe v. Town of Highland*, 909 F.2d 1097, 1099-100 (7th Cir. 1990).)

It is therefore respectfully requested that the Court allow petitioner to intervene and to file the attached notice of appeal.

Respectfully submitted,

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Glenn Miller, )  
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*Plaintiff-Intervenor*, )  
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                  ) No. 19-cv-00022  
-vs-            )  
                  )  
City of Chicago, ) (Judge Chang)  
                  )  
                  )  
*Defendant*. )

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Glenn Miller, plaintiff-intervenor, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final decision entered on January 25, 2021. Plaintiff-intervenor brings this appeal for the sole purpose of securing appellate review of the district court's rulings denying the attempts of the original plaintiff to prosecute this case as a class action.

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