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

KHALID ALI,	)	
	)	
Plaintiff,	)	Case No.: 19-cv-22
	)	
v.	)	Judge Edmond E. Chang
	)	
CITY OF CHICAGO, NORA VALDES, JOHN KELYANA, and KEVIN REPPEN,	)	Magistrate Judge Sidney I. Schenkier
	)	
Defendants.	)	

DEFENDANT CITY OF CHICAGO'S RESPONSE IN OPPOSITION TO PETITIONER GLENN MILLER'S PETITION TO INTERVENE

Petitioner Glenn Miller moves this court to allow him to intervene to appeal the denial of class certification for a case that was never litigated as a class action. Indeed, class certification was not *denied* in this case; the court struck Plaintiff Khalid Ali's motion in its entirety on the grounds that Ali had never indicated in a single pleading prior to the motion to certify a class that Ali wished to represent anyone other than himself. While Petitioner may be correct in his assertion that "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 v. JPMorgan Chase & Co.*, 530 F.3d 578, 583 (7th Cir. 2008) (emphasis in original), this case is anything but the typical putative class action.

Petitioner relies on a series of cases that hold that post-judgment intervention to appeal the denial of class certification is proper (indeed, that it may be the only time

when such intervention becomes ripe). *See* Petitioner's Mot. [ECF No. 110], ¶¶ 7-8. But Petitioner's situation is unlike any of those cases. In all of those cases, the original litigants litigated the case from the start as a putative class action, allowing "shadow" class members to monitor the litigation and rely on (or dispute) the actions of the putative lead plaintiff, and putting the defendant on notice of the existence of potential liability to a class of individuals. *See, e.g., United Airlines, Inc. v. McDonald*, 432 U.S. 385, 395 (1977) ("United was put on notice *by the filing of the Romasanta complaint* of the possibility of classwide liability…."). Here, the opposite is true, as the Court recognized in its order striking Ali's motion to certify a class:

> "The Court did not understand that **no class allegation** had been advanced in the case before the motion itself was filed; the Court mistakenly assumed that Plaintiff had done so before the filing of the certification motion. So the certification motion amounted to a request, at the end of fact discovery, to add a class-action claim to the case…Whether it is in a complaint or given some other way, notice is required. Otherwise, an entry of a certification order under Rule 23(c) cannot possibly be entered, because the rule permits entry of the order only "after a person sues... as a class representative." Plaintiff had not, as of 12/04/2019, sued as a class representative."

ECF No. 59, Order of January 29, 2020.

Petitioner perversely argues that Ali's motion, which was denied because Ali had not given any notice whatsoever of his intent to litigate his case on a class-wide basis, gave Defendant notice of *exactly that*: "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." Pet's Mot. at ¶ 10. That cannot be correct; were it so, no notice (before the certification motion) would ever be required before a class were certified. As argued in Defendant's motion to

strike, this case was litigated (and now settled) entirely as a single-plaintiff case; to change that now would greatly prejudice Defendant. But Petitioner is stuck arguing this, because he would not have standing to appeal the denial of leave to amend—that belongs to Ali alone.

Ali's lack of notice of his desire to litigate this as a class action distinguishes this cases from the cases cited by Petitioner in another way, also. While in those cases, "shadow" class members could reasonably rely on the actions of the named plaintiff, even before the class was certified or after certification was denied, Petitioner could have done no such thing—after all, there was no way that Petitioner could have known that Ali wished to represent him until nearly a year after the case was filed. No reasonable-but-absent litigant could have sat back and observed this litigation, confident that the Ali was effectively representing their rights, because, again, the case was not filed as a class action; no motion to certify a class was actually litigated; and the case ended, never having included a class-wide claim (as Ali's motion to amend to add such was denied). Petitioner does not even claim that he did such—the record is bare as to when Petitioner learned of this action or of Ali's unsuccessful attempt to certify a class,[1] or as to why Petitioner did not file an individual claim on his own behalf. Given the availability of attorney's fees for prevailing litigants, civil rights cases do not fall into the typical category of class actions where the individual claims would be uneconomical to litigate on their own.

[1] Though, given his counsel, one is skeptical that he learned of such on *the day* that Ali settled his claims; likely, he had retained said counsel much earlier.

This is a case that began and ended as a single-plaintiff action, despite Plaintiff Ali's (tardy) maneuvers. The Court should not allow Petitioner yet another bite at the class-certification apple. The Court should deny Petitioner's motion to intervene, and allow this case to end.

Dated: February 16, 2021

Respectfully submitted,

CITY OF CHICAGO
CELIA MEZA
ACTING CORPORATION COUNSEL

By: */s/ Bret A. Kabacinski*
Assistant Corporation Counsel
Atty. No. 6313169

City of Chicago Department of Law
2 N. LaSalle Street, Suite 420
Chicago, Ill. 60602
T: 312-742-1842