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.	)	
	)	
Glenn Miller,	)	
Petitioning-Intervenor	)	

REPLY IN SUPPORT OF PETITION TO INTERVENE

Petitioner seeks to intervene after judgment to appeal the Court's interlocutory rulings refusing to allow the case to proceed as a class action. Petition filed his petition to intervene on January 25, 2021, the same day the Court entered judgment. As defendant concedes, intervention to appeal the denial of class certification becomes "ripe" only upon entry of judgment. (ECF No. 114 at 1-2.) Petitioner shows below why the Court should reject defendant's attempt to resist application of this well-settled rule.

Defendant does not dispute that petitioner Miller is a member of the class plaintiff Ali sought to represent. Nor does defendant challenge Miller's showing that his individual claim is time-barred unless this case proceeds as a class action. Defendant, however, opposes intervention because plaintiff Ali's original complaint did not include class allegations. (ECF No. 114 at 2-4.) But

whether the original complaint was required to include class allegations is precisely what Miller seeks to challenge on appeal. The Court should reject defendant's invitation to prejudge the merits of the proposed appeal.

Defendant's argument about plaintiff Ali's complaint also misses the mark because the salient question for a post-judgment appeal is whether putative class members must appeal following the denial of class certification or whether "putative class members could wait until 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). In *United Airlines, Inc. v. McDonald*, 432 U.S. 385, (1977), the Supreme Court held that putative class members may wait until final judgment just as petitioner did here. Defendant mistakenly argues about whether petitioner had notice of the potential class when the complaint was filed. The correct inquiry under the relevant precedent is whether petitioner has notice when the class motion was filed. He did.

Defendant suggests that this rule does not apply here because the motion for class certification was not denied; the motion was stricken (ECF No. 59) and plaintiff Ali's subsequent motion to amend to add class allegations was denied. (ECF No. 103). This argument is contrary to the "functional equivalent" rule of *In re Bemis Company, Inc.*, 279 F.3d 419, 421 (7th Cir. 2002), most recently applied by the Court of Appeals *in Mussat v. IQVIA, Inc.*, 953 F.3d

441, 443–44 (7th Cir. 2020). This Court's rulings were the functional equivalent of an order denying certification of the proposed class.

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

Respectfully submitted,

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