

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

Anthony Murdock, et al.,

*Plaintiff,*

v.

City of Chicago,

*Defendant.*

Case No. 20-cv-1440

Hon. Gary S. Feinerman

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**CITY OF CHICAGO’S MOTION TO STAY DISCOVERY AND  
CLASS CERTIFICATION PROCEEDINGS**

Defendant, the City of Chicago (“City”), by its undersigned counsel, respectfully requests that the Court stay discovery and all other proceedings and briefings related to Plaintiffs’ Renewed Motion to Certify Case as a Class Action, (Dkt. 102), to allow the City to file a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c), based on the Seventh Circuit’s recent decision in *Mitchell v. Doherty*, —F.4th—, 2022 WL 2235461 (7th Cir. Jun. 22, 2022). In support thereof, the City states:

1. On February 27, 2020, Plaintiff, Anthony Murdock (“Murdock”), filed suit against the City under Section 1983 on his own behalf and for a putative class. (*See* Dkt. 1, Compl. ¶ 1.) According to the Complaint, Murdock was stopped by Chicago Police officers for traffic offenses, and was then arrested pursuant to a warrant that was issued by a state court judge in DuPage County. (*Id.* ¶¶ 6-7.)

2. Murdock claimed that, due to an unidentified written policy of the City, he was not allowed to post bond at the police station, although the amount of bond was indicated on the arrest

warrant. (*Id.* ¶ 7.) Rather, Murdock was required to appear before a judge in bond court the next morning, where he was eventually allowed to post the bond that was set forth on the warrant. (*Id.*)

3. Although Murdock sought relief under Section 1983, he did not allege what constitutional rights the City supposedly violated. For that reason, the City moved to dismiss the Complaint. (Dkt. 17.)

4. The City's Rule 12(b)(6) motion to dismiss the Complaint was denied on July 24, 2020. (Dkt. 25.)

5. Thereafter, on April 27, 2021, Murdock, along with ten newly-named Plaintiffs,<sup>1</sup> filed an Amended Complaint. (Dkt. 56, Am. Compl.) The Amended Complaint outlines each Plaintiff's individual circumstances, and each Plaintiff effectively claims that: they were stopped by Chicago Police officers, arrested pursuant to a valid warrant that indicated the amount of bail a judge had previously set, but they allegedly were unable to post bond at the police station due to Chicago Police Department Special Order S06-12-02, which instead required them to be brought before a judge where they eventually posted bond. (*See generally id.*) The City admits that Plaintiffs were arrested based on active arrest warrants, but denies that they were not permitted to post bond at the police station because of Special Order S06-12-02. (Dkt. 63, Ans. ¶¶ 20, 23, 28, 33, 43, 63.)

6. Plaintiffs claim this written policy violates the "Fourth and Fourteenth Amendments because it results in an unreasonable duration of post-arrest detention and imposes

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<sup>1</sup> Since that time, six Plaintiffs were voluntarily dismissed, (Dkts. 91, 100), and only five Plaintiffs remain: Murdock, Andrew Cruz, Johonest Fischer, Theresa Kennedy, and Brian Neals.

an invidious and irrational discrimination.” (Dkt. 56, Am. Compl. ¶ 12.) Thus, Plaintiffs purport to represent the interests of those individuals who, on and after February 27, 2018:

- a) were detained by police officers of the City of Chicago on a warrant for which a judge had set an amount of cash bail,
- b) were not permitted to post bail at the police station pursuant to the explicit policies set out in Section IV.B.3(a) or IV.B.3(c) of Chicago Police Department Special Order S06-12-02, and
- c) were released by posting bail after an appearance before a judge of the Circuit Court of Cook County without being held at the Cook County Jail.

(*Id.* ¶ 13.) The City denies that Plaintiffs’ constitutional rights were violated. (Dkt. 63, Ans. ¶ 12.)

7. None of the remaining Plaintiffs allege that they were in CPD custody for more than 36 hours before being transferred to the custody of the Cook County Sheriffs, who in turn presented them to a judge in bond court where their bond was eventually posted. (*See* Dkt. 56, Am. Compl. ¶¶ 17-21 (Murdock), ¶¶ 22-26 (Cruz), ¶¶ 27-36 (Fischer), ¶¶ 42-46 (Kennedy), ¶¶ 62-66 (Neals).)

8. The Parties have, in large part, completed written discovery, and began oral discovery related to whether this lawsuit should proceed as a class action; Plaintiff Neals was deposed on June 21, 2022.

9. On June 22, 2022, the Seventh Circuit issued its ruling in *Mitchell v. Doherty*, — F.4th—, 2022 WL 2235461 (7th Cir. Jun. 22, 2022). A copy of the *Mitchell* decision is attached hereto as Exhibit A.

10. The *Mitchell* plaintiffs were arrested by police officers and remained in custody for between 48 and 68 hours before receiving a bail hearing. *Id.* at \*1. The Illinois county where they were arrested did not hold bail hearings over the weekend, and all plaintiffs were either arrested

on a Friday or a Saturday, so the earliest they could be presented to a judge was the following Monday afternoon. *Id.* However, despite not being able to receive a bail hearing before then, a judge made an *ex parte* probable cause determination within 48 hours after the plaintiffs' arrests, as required by *Gerstein v. Pugh*, 420 U.S. 103 (1975), and *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). *Id.*

11. The *Mitchell* plaintiffs filed suit under Section 1983, arguing the defendants violated the Fourth Amendment "by denying them a bail hearing within forty-eight hours after detention even though a probable-cause determination had been made within that period"; they also moved to certify a class for all similarly-situated individuals. *Id.* The defendants moved to dismiss for failure to state a claim under Rule 12(b)(6), which the district court (Judge John Z. Lee) granted. *Id.* The plaintiffs timely appealed. *Id.*

12. After acknowledging that "[t]he constitutionally required timing of a bail hearing is an issue of first impression," *id.* at \*4, the Seventh Circuit affirmed, holding the "Fourth Amendment does not require a bail hearing within forty-eight hours after arrest . . . [and] that bail hearings held within sixty-eight hours . . . are constitutional under the Fourth Amendment." *Id.* at \*10.

13. Based on the Seventh Circuit's recent decision in *Mitchell*, the City intends to file a motion for judgment on the pleadings under Rule 12(c), because all Plaintiffs were arrested pursuant to valid arrest warrants based on probable cause, and were presented to a judge in bond court well within 68 hours, which the Seventh Circuit ruled was constitutional under the Fourth Amendment. The City's proposed Rule 12(c) Motion would, in the City's view, dispose of this matter in its entirety.

14. Counsel for the City sent email correspondence to Plaintiffs' counsel on June 29, 2022, to inform them of the City's forthcoming Rule 12(c) Motion, and to inquire whether Plaintiffs would agree to a stay of discovery and other class-related proceedings. Plaintiffs' counsel responded that same day and indicated their opposition.

15. Courts have the inherent authority to stay proceedings because "[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see Tex. Indep. Producers & Royalty Owners Ass'n v. EPA*, 410 F.3d 964, 980 (7th Cir. 2005).

16. In determining whether to grant a motion to stay, courts typically consider three factors: (1) whether a stay will simplify the issues in question and streamline the trial; (2) whether a stay will reduce the burden of litigation on the parties and the court; and (3) whether a stay will unduly prejudice or tactically disadvantage the non-moving party. *See, e.g., Freed v. Friedman*, 215 F. Supp. 3d 642, 658 (N.D. Ill. 2016) (Feinerman, J.); *Baxter Int'l, Inc. v. CareFusion Corp.*, No. 15-cv-9986, 2017 WL 11624669, at \*2 (N.D. Ill. May 31, 2017). The Court enjoys broad discretion in determining whether to stay proceedings. *Baxter*, 2017 WL 11624669, at \*2.

17. The Seventh Circuit has further recognized that district courts have the discretion to determine when to address class certification in relation to dispositive motions. *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 879 n. 4 (7th Cir. 2012); *Wiesmueller v. Kosobucki*, 513 F.3d 784, 787 (7th Cir. 2008).

18. One instance in which it may be appropriate for a court to rule on a dispositive motion prior to class certification is "when there is sufficient doubt regarding the likelihood of

success on the merits of a plaintiff's claims." *Hakim v. Accenture U.S. Pension Plan*, 735 F. Supp. 2d 939, 956 (N.D. Ill. 2010).

19. Accordingly, a large number of courts have deferred discovery and class certification proceedings pending the court's ruling on a dispositive motion. *See, e.g., U.S. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 422 U.S. 694, 700 n.5 (1975) (observing that "[t]he District Court deferred determination of whether [other separately filed actions] could be maintained as class actions under Rule 23 and additionally postponed discovery and other activity pending disposition of the motion to dismiss in this case."); *White v. Coca-Cola Co.*, 542 F.3d 848, 854 (11th Cir. 2008) ("Because the district court was correct to grant summary judgment in favor of Coca-Cola, the district court did not abuse its discretion in denying the motions ... for discovery and class certification. The resolution of the merits of this controversy obviates any issue about these procedures."); *Marx v. Centran Corp.*, 747 F.2d 1536, 1552 (6th Cir. 1984) ("It has never been doubted that a complaint asserting a class action could be dismissed on the merits before determining whether the suit could be maintained as a class action."); *Hill v. Chase Bank, NA*, No. 2:07-CV-82-AS, 2007 WL 4224073, at \*5 (N.D. Ind. Nov. 26, 2007) (finding that granting defendant's motion to stay class based discovery until court rules on defendant's motion to dismiss "will encourage the most efficient use of the parties' time and effort[.]"); *Talley v. NCO Fin. Sys., Inc.*, No. 2:06-CV-48-PPS-PRC, 2006 WL 2927596, at \*2 (N.D. Ind. Oct. 12, 2006) (addressing defendant's motion to stay issue of class certification until court ruled on defendant's anticipated motion for summary judgment and granting stay on basis that "it is in the interests of judicial economy and efficiency for the Court to rule on the motion for summary judgment prior to the motion for class certification in order to determine whether the claim of the named Plaintiff lacks merit and thus whether the motion for class certification is moot."); *Mallo v. Pub. Health Tr.*, 88

F. Supp. 2d 1376 (S.D. Fla. 2000) (granting defendant's motion to stay discovery and class certification pending disposition of defendant's motion to dismiss amended class action complaint); *Lawson v. Fleet Bank of Maine*, 807 F. Supp. 136, 138 n.1 (D. Me. 1992) (“[T]he Court believes that its decision to defer action on the class certification motion and to stay discovery until after resolution of the dispositive motions was the more prudent use of judicial resources.”).

20. The Court should follow suit here, and grant the City's requested stay allowing it to file a potentially case-dispositive motion; without an underlying constitutional violation, Plaintiffs' Section 1983 claims fail as a matter of law. *See First Midwest Bank Guar. of Est. of LaPorta v. City of Chicago*, 988 F.3d 978, 986 (7th Cir. 2021); *Swanigan v. City of Chicago*, 775 F.3d 953, 962 (7th Cir. 2015); *Petty v. City of Chicago*, 754 F.3d 416, 424-25 (7th Cir. 2014).

21. Moreover, a stay would allow the Parties to conserve time and resources in conducting discovery and briefing a class certification motion that may be unnecessary. It would also serve the judicial resources of the Court to potentially resolve this matter in a Rule 12(c) posture before addressing a class certification motion.

22. Plaintiffs also would not be unduly prejudiced if this action is stayed because a ruling on this essential legal question will better frame the issues for the Parties going forward. And, if the dispositive motion is granted, Plaintiffs cannot demonstrate prejudice because their claims will be dismissed. *See Thompson v. Cnty. of Medina*, 29 F.3d 238, 241 (6th Cir. 1994) (finding where “neither plaintiffs nor the members of the class were prejudiced by the order of the court's rulings, the district court acted well within its discretion in concluding that it should decide the motion for summary judgment first.”).

For these reasons, Defendant, the City of Chicago, respectfully requests that the Court stay discovery and all other proceedings pertaining to whether this case should proceed as a class action, allow the City to file a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) based on the Seventh Circuit's ruling in *Mitchell*, and grant such other and further relief as the Court deems necessary and just.

Dated: July 1, 2022

Respectfully submitted,

**CITY OF CHICAGO**

/s/ Elizabeth E. Babbitt

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