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

Theresa Kennedy, individually and for others similarly situated, *Plaintiffs,* *v.* City of Chicago, *Defendant.*	Case No. 20-cv-1440 Hon. Thomas M. Durkin

CITY OF CHICAGO'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO ADD PLAINTIFFS AND TO FILE AMENDMENT TO AMENDED COMPLAINT

INTRODUCTION

Plaintiff Theresa Kennedy ("Plaintiff" or "Kennedy") challenges a Chicago Police Department ("CPD") policy that allegedly prevents persons arrested on warrants issued outside the City of Chicago ("City"), or on weekends and Court Holidays, from posting bond at the police station. More than three years into litigation, Plaintiff's Motion for Leave to Add Plaintiffs and File Amendment to Amended Complaint ("Motion") seeks to add two new plaintiffs. (Dkt. 148.)

However, Plaintiff sought leave from Judge Feinerman in December 2022 to add new class representatives. (Dkt. 138 at 4-5.) Judge Feinerman denied Plaintiff's request because the deadline to amend the pleadings or add new parties expired two years ago on April 26, 2021, as set forth by the scheduling order agreed to by the Parties and entered by the Court. (Dkt. 50.) As Judge Feinerman recognized when denying leave to amend in December, Federal Rule of Civil Procedure 16(b)(4) ("Rule 16") required Plaintiff to demonstrate "good cause" to modify the deadline that was previously extended by the Parties' agreement. (*See* **Exhibit A**, Dec. 14, 2022 Hr'g Tr. at 8:3-13.) However, Plaintiff failed to address Rule 16(b)(4) and did not attempt to demonstrate how good cause could be established years after the expiration of the amendment deadline. (*Id.* at 8:3-5.) And Judge Feinerman could not "even see how 16(b)(4) could be satisfied at this juncture." (*Id.* at 8:7-8.) Judge Feinerman correctly denied Plaintiff's belated attempt to name additional class representatives, and the same outcome is warranted here.

Despite Judge Feinerman's observations at the December 14, 2022 hearing, Plaintiff again fails to cite Rule 16(b)(4) in her Motion, and none of her arguments support modifying the scheduling order to allow amendment now. First, Plaintiff's argument that she was blindsided by Judge Feinerman's recent dismissal of four plaintiffs should be rejected because Plaintiff was aware of the Cook County general administrative order ("GAO 2015-06") that formed the basis

for Judge Feinerman's ruling since the City answered the complaint in this matter more than two years ago, and she targeted some of her earliest discovery requests in this action toward that order. Second, Plaintiff's new-found concerns about adequacy do not establish "good cause" for modifying the scheduling order, as such concerns should have been apparent since she joined the lawsuit nearly two years ago. Third, contrary to Plaintiff's argument, this case's status as a putative class action does not provide blanket authority to add new plaintiffs at any point in the litigation.

Because Plaintiff did not and cannot demonstrate good cause under Rule 16(b)(4), the Court need not analyze whether amendment should be granted under Federal Rule of Civil Procedure 15(a)(2). But even under Rule 15, this Court should deny amendment because Plaintiff's inexcusable delay will unfairly prejudice the City. The Motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

I. Anthony Murdock files the original complaint in this action.

Anthony Murdock ("Murdock"), the original named plaintiff in this action, filed suit against the City more than three years ago on February 27, 2020. (Dkt. 1.) Murdock alleged that he was arrested by CPD on the morning of September 29, 2018 on a DuPage County arrest warrant, held at the police station, and transported to bond court, where he was eventually allowed to post bond. (*Id.* ¶¶ 6-7.) Murdock claimed that a CPD policy ("S06-12-02") prevents individuals arrested on warrants on Saturdays, Sundays, or Court Holidays from posting bond at the police station when the bond amount is set forth on the warrant. (*Id.* ¶¶ 4-5.) Murdock further alleged that, as a result of this policy, he was deprived of some unspecified constitutional right, and thus brought suit for himself and on behalf of a putative class of similarly-situated individuals. (*Id.* ¶ 8.)

On August 7, 2020, the City denied the substantive allegations in the complaint and asserted affirmative defenses, including that "[a]t all times relevant, Defendant City's policies

regarding bonding out people arrested on warrants were mandated by Illinois state law, the Illinois Supreme Court Rules, ***and/or orders implemented by the Circuit Court of Cook County***." (Dkt. 27 at 3 (emphasis added).) Murdock issued written discovery requests shortly thereafter on September 24, 2020 seeking information regarding when the City "became aware of" GAO 2015-06 and all related documents and communications. (*See* **Group Exhibit B**.)

II. Judge Feinerman enters a scheduling order setting April 26, 2021 as the deadline to amend the pleadings or add new parties to this case.

The Parties filed their initial joint status report with the Court on August 21, 2020, and proposed a May 3, 2021 deadline to amend the pleadings and add new parties. (Dkt. 30 at 3.) The Court adopted a shorter timeline that required motions to amend pleadings and add new parties to be filed on or before March 25, 2021. (Dkt. 31.) Over the following months, Murdock's counsel indicated to the Court that they intended to request leave to add additional plaintiffs, and that they would not likely be able to amend before the March 25, 2021 deadline. (Dkt. 32; Dkt. 47.)

On February 16, 2021, the Parties informed the Court that they would not be able to complete discovery in time, and that Plaintiff would not be able to meet the current amendment deadline. (Dkt. 49 at 2.) On February 23, 2021, and based on agreement of the Parties, Judge Feinerman extended the deadline to amend the pleadings or add new parties to April 26, 2021. (Dkt. 50.) This was the first and final extension to the amendment deadline.

III. Murdock amends the complaint to add 10 new Plaintiffs and discovery continues.

On April 26, 2021, Murdock filed an unopposed motion pursuant to Rule 15(a)(2) to add ten new plaintiffs. (Dkt. 54.) The Court granted Murdock's motion, and on April 27, 2021, Murdock filed the operative Amended Complaint, adding Kennedy and nine others as named

plaintiffs.[1] (Dkt. 56.) In the Amended Complaint, Plaintiffs challenged two aspects of S06-12-02, alleging that it prevented the following individuals from posting bond at the police station: (1) persons arrested on Saturdays, Sundays, or Court Holidays; and (2) persons arrested on warrants issued outside of the First Municipal District, *i.e.*, the City of Chicago. (*Id.* ¶ 9.) The City answered the Amended Complaint on June 3, 2021 and, as before, asserted an affirmative defense that S06-12-02 was mandated by Illinois law and "orders implemented by the Circuit Court of Cook County." (Dkt. 63 at 3.)

At the same time, the City continued to respond to Plaintiffs' written discovery requests and produced many documents. For example, on January 27, 2021, and July 20, 2021, the City answered Plaintiffs' Third and Fourth Requests for Production, producing individual arrest and transportation reports for 144 arrestees. (*See* Dkt. 138 at 3-4.) Then, on September 30, 2021, in response to Plaintiff's First Request for the Production of Digital Data, the City produced a spreadsheet for all arrests made by Chicago police officers from February 27, 2018 to August 31, 2021 that contained over 400,000 rows of data, including, *inter alia*, arrestees' names, dates of arrests, offenses committed, bond amounts, and bond types. (*Id.* at 4.) Additionally, on December 10, 2021, the City answered Plaintiffs' requests to admit and stated that S06-12-02 was promulgated to comply with GAO 2015-06. (*See* Grp. Ex. B.)

By late 2021, and continuing into early 2022, Plaintiffs' counsel apparently lost contact with certain named Plaintiffs. (Dkt. 89 at 1; Dkt. 98 at 2.) Accordingly, six Plaintiffs were voluntarily dismissed between December 3, 2021, and February 11, 2022. (Dkts. 89, 90, 100.) Murdock, Kennedy, Cruz, Fischer, and Neals proceeded as the named Plaintiffs. Despite the significant additional arrest data the City provided, no efforts were made to add other plaintiffs.

[1] The other additional Plaintiffs were Andrew Cruz, Johonest Fischer, Maurice Grant, Chawan Lowe, James McGee, Brian Neals, Myron Nelson, John Perry, and Duwayne Richardson. (*See* Dkt. 56.)

IV. Discovery and class certification proceedings are stayed after the City moves for judgment on the pleadings.

On June 29, 2022, the City's counsel contacted Plaintiffs' counsel and indicated that, in light of the Seventh Circuit's recent holding in *Mitchell v. Doherty*, 37 F.4th 1277 (7th Cir. 2022), the City intended to move to stay discovery and class certification proceedings and file a potentially case-dispositive motion for judgment on the pleadings under Rule 12(c). The Court stayed discovery pending disposition of the forthcoming Rule 12(c) motion, (Dkt. 112), which the City filed on July 19, 2022. (Dkt. 115.)

In addition to arguing that Plaintiffs' Fourth Amendment claims were foreclosed by *Mitchell*, the City also argued that Plaintiffs' claims failed because Illinois law required CPD to bring to bond court individuals arrested within Cook County on out-of-county warrants. (*See id.* at 12-15.) Relying on *Bethesda Lutheran Homes & Services Inc. v. Leean*, 154 F.3d 716 (7th Cir. 1998), the City further argued that GAO 2015-06—which states that individuals arrested on out-of-county warrants within Cook County are "required to appear in bond court"—constituted state law that the City was compelled to follow. (*See* Dkt. 122 at 5-8.)

On December 1, 2022, after hearing oral argument, ordering additional briefing on this issue, and considering supplemental authority, Judge Feinerman concluded that GAO 2015-06 constituted a command of state law that plainly required the City to bring persons arrested on warrants issued outside of Cook County to bond court. (*See* Dkt. 136 at 5-8.) Accordingly, the Court dismissed all plaintiffs arrested on out-of-county warrants, leaving Kennedy—who was arrested on a Chicago warrant on a weekend—as the sole remaining named plaintiff. (*Id.* at 8.) The Court denied Kennedy's pending motion for class certification "without prejudice to renewal as to Plaintiff Kennedy only" and lifted the stay of discovery. (Dkt. 135.) Plaintiffs did not seek leave to amend or add new plaintiffs at any point during the four months that the City's Rule 12(c)

motion was pending before Judge Feinerman, despite being on notice that all or most of the five remaining Plaintiffs were in jeopardy of being dismissed.

V. Kennedy unsuccessfully moves to reconsider Judge Feinerman's ruling on the City's Rule 12(c) motion and her first attempt add new plaintiffs is denied.

Plaintiff moved for reconsideration of the Court's decision granting in part the City's Rule 12(c) motion and alternatively sought the entry of partial judgment under Rule 54(b) for those plaintiffs whose claims were dismissed. (Dkt. 137.) Without leave of Court, Kennedy then issued a Fifth Request for the Production of Documents seeking information about some 250 potential class members believed to have been arrested on Cook County warrants during weekends and Court Holidays. (*See* Dkt. 138 at 2.)

On December 8, 2022, at the Court's direction, the Parties submitted a joint status report. (*Id.*) Kennedy acknowledged that although she had the City's spreadsheet of arrestees since September of 2021, "[i]t was unreasonable to expect counsel to focus on persons on weekends and court holidays on warrants issued in Cook County until the Court ruled on [the Rule 12(c) motion] on December 1, 2022." (*Id.* at 2.) Suddenly anticipating that the City would challenge her adequacy and typicality, Kennedy also asked for, among other things, leave to add "up to three named plaintiffs" within 120 days. (*Id.* at 2, 4.) The City opposed Kennedy's belated request to add additional named plaintiffs and issue new and expansive written discovery. (*Id.* at 3-7.) The City argued that Plaintiff failed to establish "good cause" under Rule 16(b)(4) to modify the scheduling order setting April 26, 2021 as the deadline to amend the complaint or add new parties. (*Id.* at 5.)

On December 14, 2022, the Court denied Kennedy's motion for reconsideration and for Rule 54(b) judgment. (Dkt. 142.) The Court also denied Kennedy's request to extend the time to add new plaintiffs. (*See* Ex. A at 9:7-15.) The Court reasoned that Kennedy's request to amend the pleadings was premature because "we don't know at this juncture whether the City will challenge

Kennedy's adequacy and typicality, and we don't know whether any such challenge would succeed." (*Id.* at 7:18-8:2.) Moreover, the Court observed that Plaintiff had not even cited Rule 16(b)(4) in requesting to extend the time to add new plaintiffs, let alone shown that this standard was met. (*Id.* at 8:3-5.) The Court stated that any issues as to Kennedy's adequacy and typicality "should have been apparent to everybody since she joined the case" in April of 2020, (*id.* at 8:6-7), and further remarked "I don't even see how 16(b)(4) could be satisfied at this juncture." (*Id.* at 8:7-8.) When Plaintiff again argued that there was no need to identify additional plaintiffs who were arrested on weekends and holidays until after Court ruled, the Court indicated that this issue could have been anticipated by Plaintiff and her counsel. (*See id.* at 9:1-6.)

VI. Plaintiff seeks leave to add new named plaintiffs after the scheduling order's deadline.

After Judge Feinerman denied Plaintiff's request to add new class representatives, he retired from the bench and this case was reassigned. (Dkt. 143.) During the status hearing on February 17, 2023, the Parties agreed that the Court should resolve the question of Plaintiff's being permitted to amend her complaint before proceeding with class certification briefing.

Accordingly, on February 28, 2023, Plaintiff filed the Motion seeking leave to add two named plaintiffs who were allegedly not allowed to post bond at the police station: (1) Santiago Bravo, who was arrested on warrant issued within Cook County but outside the First Municipal District; and (2) John Plummer, who was arrested on a Sunday. (Dkt. 148.) Plaintiff argues the Motion is timely because the Court's ruling on the Rule 12(c) motion was a "sea-change" that altered the scope of the putative class, and also because the substitution of plaintiffs is typically allowed in the class-action context. (*Id.* at 2, 4-11.)

LEGAL STANDARD

Generally, motions for leave to amend a complaint are evaluated under Rule 15(a)(2).

Alioto v. Town of Lisbon, 651 F.3d 715, 719 (7th Cir. 2011). However, under Rule 16, district courts must issue scheduling orders in their cases as soon as practicable, and must set a deadline for filing amended pleadings. Fed. R. Civ. P. 16(b)(3)(A). When an amendment to a pleading is sought "after the expiration of the trial court's scheduling order deadline to amend pleadings, the moving party must show 'good cause.'" *Trustmark Ins. v. Gen. & Cologne Life Re of Am.*, 424 F.3d 542, 553 (7th Cir. 2005). The primary consideration in assessing good cause is the moving party's diligence. *Anand v. Lexington Law LLC*, No. 17 C 7085, 2018 WL 6045204, at *1 (N.D. Ill. Nov. 19, 2018) (Durkin, J.). Failure to demonstrate good cause under Rule 16(b)(4) "is fatal to the motion to amend." *Allen v. Brown Advisory, LLC*, 41 F.4th 843, 852 (7th Cir. 2022). Only after the moving party demonstrates good cause should the Court determine whether leave to amend is proper under Rule 15(a)(2). *Alioto*, 651 F.3d at 719.

Although Rule 15(a)(2) provides that leave to amend should be freely given "when justice so requires," Fed. R. Civ. P. 15(a)(2), it is not automatic, and district courts have broad discretion to deny leave to amend when there is undue delay and unfair prejudice to the defendant. *Johnson v. Cypress Hill*, 641 F.3d 867, 871-72 (7th Cir. 2011). Plaintiff is not entitled to amend her complaint under either Rule 16 or 15. Her Motion should be denied.

ARGUMENT

I. The Motion should be denied because Plaintiff cannot demonstrate good cause to add new plaintiffs nearly two years after the deadline to amend the complaint.

Plaintiff cannot demonstrate good cause to modify the Court's scheduling order that imposed a deadline of April 26, 2021—by the Parties' agreement—to amend the complaint or add new parties. Neither the procedural history of this case nor its status as a putative class action establish good cause for ignoring that deadline.

A. The Motion is untimely and neither the procedural history of this action nor belated concerns about Plaintiff's adequacy establish good cause.

Rule 16(b)(4)'s heightened good-cause standard focuses on "the diligence of the party seeking amendment." *Alioto*, 651 F.3d at 720. Rule 16 is designed to ensure that "at some point both the parties and the pleadings will be fixed." Fed. R. Civ. P. 16, 1983 advisory comm. notes; *see Johnson v. Methodist Med. Ctr. of Ill.*, 10 F.3d 1300, 1304 (7th Cir. 1993) (there must be "a point at which a plaintiff makes a commitment to the theory of its case"). Another aim of Rule 16 is to "prevent parties from delaying or procrastinating and to keep the case moving toward trial." *Alioto*, 651 F.3d at 720 (quotations omitted).

Plaintiff claims her Motion is "timely." (Dkt. 149 at 2, 8.) She is wrong. Plaintiff's request to amend the Complaint comes ***nearly two years after*** the April 26, 2021 deadline imposed for amending the complaint and adding new parties. (Dkt. 50.) Plaintiff thus bears the burden to demonstrate good cause excusing her belated amendment attempt. *Alioto*, 651 F.3d at 719. Yet, the Motion does not address Rule 16(b)(4), nor does it cite a single case supporting—or even suggesting—that good cause exists here. This is not the first time Plaintiff has avoided the issue, and she certainly had notice of the standard given Judge Feinerman's remarks at the December 14, 2022 hearing. (*See* Ex. A at 8:3-8 (denying leave to amend where Plaintiff "didn't cite Rule 16(b)(4), let alone establish that it was satisfied").) Plaintiff instead attempts to justify her untimely Motion based on the procedural history of this action and belated concerns about adequacy. Neither argument establishes "good cause" under Rule 16(b)(4).

Without referring to "good cause," Plaintiff contends her amendment should be allowed because Judge Feinerman's decision on the City's Rule 12(c) Motion "was a sea-change in this case," (Dkt. 149 at 4), as if that somehow excuses her delinquent attempt to name new plaintiffs. But the dismissal of four previously named plaintiffs on December 1, 2022 cannot provide Plaintiff

with good cause. Courts have regularly found that an adverse ruling on a dispositive motion does not provide good cause under Rule 16. *Rexnord Indus., LLC v. Bigge Power Constructors*, 947 F. Supp. 2d 951, 962 (E.D. Wis. 2013). Indeed, "[e]very district court that has considered the question has concluded that a party's changing its litigation strategy is not good cause for amending a scheduling order under Rule 16(b)(4)." *Id.* (collecting cases). The same logic applies here.

The arguments raised in the City's Rule 12 motion were not unforeseen to Plaintiff. On August 7, 2020, and June 3, 2021, the City answered the original complaint and Amended Complaint, respectively, and asserted an affirmative defense arguing that Plaintiff's claims were barred because S06-12-02 was mandated by "orders implemented by the Circuit Court of Cook County." (Dkt. 27 at 3; Dkt. 63 at 3.)[2] Some of Plaintiff's earliest written discovery requests issued on September 24, 2020 were directed toward GAO 2015-06. (*See* Grp. Ex. B.) And if there were any doubt, on December 10, 2021, the City expressly stated in response to Plaintiff's request to admit that S06-12-02 was promulgated to comply with GAO 2015-06. (*Id.*)

Yet Plaintiff's counsel chose to name just one plaintiff—Kennedy—who was arrested on a Cook County warrant. Plaintiff's litigation strategy does not provide her with good cause. *See Carroll v. Stryker Corp.*, 658 F.3d 675, 684 (7th Cir. 2011) (plaintiff failed to demonstrate good cause because "the failure to anticipate an obvious and legally well-grounded defense does not excuse the delay"); *see also In re Enron Corp. Sec., Derivative & ERISA Litig.*, 610 F. Supp. 2d 600, 652-53 (S.D. Tex. 2009) (class representative failed to establish good cause to modify scheduling order and pursue alternative theory of liability where plaintiff "deliberately chose to

[2] Plaintiff's counsel knew of the City's likelihood of relying on GAO 2015-06 almost six months before the original complaint was filed in this lawsuit. Plaintiff's counsel here also represented the plaintiff in *Ali v. City of Chicago*, where the court found "as early as September 20, 2019, [the plaintiff] was on notice that the [City] intended to rely on a Circuit Court-issued General Administrative Order to justify bringing [the plaintiff] to bond court before allowing him to post bond (instead of just accepting bond at the police station)." 503 F. Supp. 3d 661, 667 (N.D. Ill. 2020).

pursue a broad, innovative, and risky theory"). The Court should reject Plaintiff's wait-and-see approach when she and certainly her counsel were well-versed with GAO 2015-06 and had ample time to seek an amendment before Judge Feinerman ruled on the Rule 12(c) motion.

Last-minute concerns about Kennedy's adequacy also do not establish good cause. Plaintiff claims that she "promptly" responded to anticipated challenges about her adequacy after the Court's Rule 12(c) ruling. (Dkt. 149 at 7-8.) But as Judge Feinerman observed, any doubts about Kennedy's adequacy or typicality "should have been apparent to everybody" since Kennedy joined the case in April 2021. (Ex. A at 8:6-7.) Questions about whether Kennedy's claims are typical of the class or if she can adequately represent that class are the same now as they were then. Her eleventh-hour fears ring hollow.

The Motion is thus untimely under the scheduling order by almost two years and there is no good cause to extend that deadline that was previously extended by agreement of the Parties. (Dkt. 50.) Indeed, the Seventh Circuit has previously affirmed denials of untimely motions for leave to amend under Rule 16 where the plaintiffs sought to amend their pleadings in a much more timely fashion than Plaintiff here. *See Bell v. Taylor*, 827 F.3d 699, 706 (7th Cir. 2016) (leave to amend properly denied where motion was filed eight months after deadline); *Carroll*, 658 F.3d at 684 (same, seven months); *Adams v. City of Indianapolis*, 742 F.3d 720, 734 (7th Cir. 2014) (same, six months). And courts within this Circuit have followed suit. *See, e.g.*, *Thornton v. Lashbrook*, No. 17-cv-01296, 2020 WL 8717675 (S.D. Ill. Aug. 4, 2020) (denying leave to amend under Rule 16(b)(4) where motion was filed over a year after deadline); *Repking v. McKennedy*, No. 12-cv-2034, 2014 WL 1797686 (C.D. Ill. May 6, 2014) (same, 14 months); *K.R. ex. rel Johnson v. United States*, No. 1:19-cv-01047, 2022 WL 468580 (C.D. Ill. Feb. 15, 2022) (same, 13 months). The Court should enforce the scheduling order and reject Plaintiff's invitation to disregard it.

B. That the case is a putative class action does not establish good cause.

Plaintiff also argues that the Motion is timely because courts routinely allow for the substitution of named plaintiffs in class actions. However, nothing about this case's status as a putative class action establishes "good cause" for her inexcusable delay. To the contrary, a closer examination of the cases cited by Plaintiff show that there is no bright-line rule allowing the substitution of named plaintiffs in class-action litigation. While *Phillips v. Ford Motor Co.* noted that amending a complaint to name additional class representatives is "routine," that statement is *dicta*, as the question before the court was not whether the addition of a new plaintiff was proper, but whether it "commenced" a new suit for purposes of removal under the Class Action Fairness Act. 435 F.3d 785, 786 (7th Cir. 2006). That issue is irrelevant here.

In the class-action context, courts have routinely denied leave to add new parties or claims where plaintiffs failed to show good cause to modify the scheduling order. *See In re Milk Prod. Antitrust Litig.*, 195 F.3d 430, 438 (8th Cir. 1999) ("[p]laintiffs' present realization that their lone named complainant may not qualify as a class representative does not establish good cause"); *Depianti v. Jan-Pro Franchising Int'l, Inc.*, 39 F. Supp. 3d 112, 122 (D. Mass. 2014) (plaintiffs failed to show good cause and observing that the proposed new plaintiffs "would not be prejudiced by the denial of the Motion to Amend because they may, in any event, file one or more separate suits on their own behalf"), *aff'd*, 873 F.3d 21 (1st Cir. 2017); *Zyda v. Four Seasons Hotels & Resorts*, 371 F. Supp. 3d 803, 810 (D. Haw. 2019) (decertification of one class's claims did not provide good cause to modify scheduling order and allow the addition of a new named plaintiff).

None of the authorities cited by Plaintiff, however, address Rule 16(b)(4). If anything, Plaintiff's cited cases demonstrate that the addition of new plaintiffs is allowed only in specific circumstances. First, amendment may be allowed early in a case, prior to the entry of a scheduling

order, or pursuant to Rule 15. For example, *Gubala v. CVS Pharmacy, Inc.*, allowed an amendment to name a new plaintiff who could assert Illinois state law claims on a class-wide basis after the court granted a Rule 12(b)(6) motion to dismiss at the pleadings stage and before a scheduling order was entered—not years into litigation and years after such deadline expired. No. 15 C 9039, 2015 WL 3777627, at *8 (N.D. Ill. Jun. 16, 2015) (Durkin, J.). *In re Allstate Corp. Securities Litigation* affirmed the lower court's decision to allow the addition of new named representatives prior to class certification briefing, but did so pursuant to Rule 15(a)(2) and without first requiring a showing of good cause under Rule 16(b)(4). 966 F.3d 595, 614-16 (7th Cir. 2020). This was presumably because the motion to amend was timely filed—unlike in this case. *See id.* at 616 (the plaintiffs' request "amounted to an ordinary pleading amendment governed by [Rule] 15"). Those cases have no bearing here where Plaintiff's Motion is brought more than three years into litigation and nearly two years after the amendment deadline in the scheduling order.

Second, new plaintiffs may be added after a class is certified where "a class representative is dismissed on grounds specific to her." *Mullen v. GLV, Inc.*, 488 F. Supp. 3d 695, 705 (N.D. Ill. 2020), *aff'd*, 37 F.4th 1326 (7th Cir. 2022). However, none of the post-certification cases cited by Plaintiff allow a class representative who is dismissed on adequacy grounds to shop for a replacement, which would defeat the purpose of requiring class actions to satisfy the requirements of Rule 23. *See, e.g.*, *id.* (allowing post-certification substitution where plaintiff's claims failed for lack of standing at summary judgment). *NorthShore University HealthSystem* is also distinguishable. No. 07-CV-4446, 2018 WL 2383098 (N.D. Ill. Mar. 31, 2018). In that case, the class definition was trimmed from purchasers of inpatient and outpatient services, to outpatient purchasers alone, leaving some members of a certified class with no representative at all. *Id.* at *3. The Court thus allowed plaintiffs' counsel to find a new named plaintiff who could represent the

interests of outpatient purchasers (who had no representation in an already certified class). *Id.* at *8. *NorthShore* is inapposite because Plaintiff represents the only permissible putative class following Judge Feinerman's ruling on the City's Rule 12(c) motion.

Put simply, the fact this case is a putative class action does not allow Plaintiff to add new class representatives any time she likes, and it does not establish "good cause" for modifying the scheduling order almost two years after the deadline to amend the complaint expired. Accordingly, Plaintiff has not, and cannot, demonstrate good cause. Her Motion should be denied.

II. Even if Plaintiff could demonstrate good cause, the Motion should be denied because the proposed amendment will cause undue delay and unduly prejudice the City.

Plaintiff cannot establish good cause to modify the scheduling order. The Court need not assess whether leave to amend should be granted under Rule 15(a)(2). *See Alioto*, 651 F.3d at 719. But even if Plaintiff could show good cause, her Motion should still be denied.

Although Rule 15(a)(2) provides that leave to amend should be freely given "when justice so requires," *see* Fed. R. Civ. P. 15(a)(2), it remains within the court's broad discretion to deny leave to amend when it has "good reason" for doing so, such as futility, undue delay, prejudice to another party, or bad-faith conduct. *Liebhart v. SPX Corp.*, 917 F.3d 952, 964 (7th Cir. 2019). As the Seventh Circuit has recognized, "[p]rejudice to the nonmoving party caused by undue delay is a particularly important consideration when assessing a motion under Rule 15(a)(2)." *Allen*, 41 F.4th at 853. And the "longer the delay, the greater the presumption against granting leave to amend." *King v. Cooke*, 26 F.3d 720, 723 (7th Cir. 1994) (internal citation omitted).

Here, Plaintiff's two-year delay in seeking to add additional plaintiffs is unreasonable and unfairly prejudicial to the City. Plaintiff was on notice that the City would rely on GAO 2015-06 for more than two years when: (1) the City answered the original complaint in August 2020; (2) Plaintiff issued discovery requests concerning GAO 2015-06 in September 2020; and (3) when the

City answered Plaintiff's requests to admit in December 2021. (*See* § I(A), *supra.*) There was no reason for Plaintiff to wait until now to seek to add class representatives who are beyond the reach of this general administrative order. *See, e.g.*, *Methodist*, 10 F.3d at 1304 (affirming denial of motion to amend when lower court found that even if plaintiff's proposed amendment was based on information learned during discovery, plaintiff did not move until four or five months later); *Feldman v. Am. Mem'l Life Ins.*, 196 F.3d 783, 793 (7th Cir. 1999) (same, based on five-month delay after discovering the facts that allegedly necessitated the amendment); *Perrian v. O'Grady*, 958 F.2d 192, 195 (7th Cir. 1992) (same, when plaintiff "ha[d] not explained why he waited [three and a half months]" to add additional defendants). Plaintiff's delay should not be tolerated—particularly when she had arrest data sufficient to identify new plaintiffs since September 30, 2021.

Moreover, the addition of new plaintiffs would unfairly prejudice the City. Allowing Plaintiff to amend her complaint will restart discovery for the City, requiring it to propound discovery on and depose the new plaintiffs. *See Chavez v. Ill. State Police*, 251 F.3d 612, 632-33 (7th Cir. 2001) (affirming denial of leave to amend based on undue delay and unfair prejudice where the defendant would be required to undergo additional discovery). The City should not be forced to incur additional time, expense, and delay in defending against the claims of previously unnamed plaintiffs where this action has been pending for more than three years, and Plaintiff knew of the potential impact of GAO 2015-06 for just as long. Even if this Court finds that good cause has been shown, it should nevertheless exercise its discretion and deny leave to amend.

CONCLUSION

For these reasons, the City respectfully requests that the Court deny Plaintiff's Motion, reject Plaintiff's belated attempt to amend the Complaint to add new class representatives, and grant such other and further relief as this Court deems necessary and just.

Dated: March 28, 2023

Respectfully submitted,

CITY OF CHICAGO

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