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

Theresa Kennedy,	)	
	)	
Plaintiffs,	)	
	)	No. 20-cv-1440
-vs-	)	
	)	
City of Chicago,	)	*(Judge Durkin)*
	)	
Defendant.	)	

PLAINTIFF'S RESPONSE TO SUR-REPLY (ECF No. 158)

Plaintiff files this response to defendants' sur-reply pursuant to leave of Court.

1. Plaintiff does not ask the Court to view her Rule 20 motion to add additional parties as a Rule 24 petition to intervene

Defendant erroneously reads plaintiff's reply memorandum as asking the Court to construe plaintiff's motion to add additional plaintiffs as a petition to intervene. (ECF No. 158 at 1.) Defendant's perception is incorrect.

A petition to intervene is not filed by a party to a lawsuit. Intervention proceeds under Rule 24 of the Federal Rules of Civil Procedure and is filed by the petitioning-intervenor. This procedure is illustrated in *Ali v. City of Chicago*, 34 F.4th 594 (2022), an appeal in a case defendant cites in ECF No. 152 at 11 n.2.

The named plaintiff in this case proceeds under Rule 20 to add additional class representatives.[1] The Seventh Circuit recognized this procedure in *Chavez v. Illinois State Police*, 251 F.3d 612, 631 (7th Cir. 2001), where it upheld the district court's

[1] Plaintiff acknowledges and apologizes for the typographical error in her opening memorandum, where she referred to her motion to add plaintiffs as governed by "Rule 21" of the Federal Rules of Civil Procedure. (ECF 149 at 2 n.1.)

refusal to allow add as an additional plaintiff. Unlike this case, the proposed additional plaintiff in *Chavez* had been identified as a member of the putative class almost three years before the motion to add was filed. *Id.* In this case, the proposed additional plaintiffs were not identified until after January 20, 2023, when defendant produced documents about additional class members. Moreover, and again unlike this case, discovery had closed and trial was imminent. *Id.*

There is no merit in defendant's argument that plaintiff should have been able to identify the two proposed additional plaintiffs from the spreadsheet defendant produced on September 30, 2021 (referred to at ECF No. 152 at 5): Neither was injured by the municipal policy until 2022. Defendant applied its policy Bravo on November 20, 2022 (Proposed Amendment to Amended Complaint, ECF No. 148, par. 87), and to Plummer on June 19, 2022. (Proposed Amendment to Amended Complaint, ECF No. 148, par. 92).

Plaintiff does not ask the Court to construe her Rule 20 motion to add additional parties as a petition to intervene. Plaintiff discussed intervention in her reply memorandum to point out that the Seventh Circuit has not ruled on whether "good cause" is required to add or replace named plaintiffs in a putative class action. (ECF No. 153 at 4-5.) The Court should reject defendant's attempt to mischaracterize plaintiff's arguments.

2. Plaintiff does not concede that she cannot satisfy the timeliness requirement of Rule 15 or the good cause standard of Rule 16.

Defendant is mistaken in asserting that plaintiff "implicitly concedes" that she cannot meet the timeliness standard of Rule 15 or the good cause standard of Rule 16. (ECF No. 159 at 2.) Plaintiff's position is to the contrary.

Plaintiff argued in her opening memorandum that her motion to add parties should be judged by the timeliness standard of Rule 15.[2] (ECF No. 149 at 2.) Plaintiff then explained why her motion to add plaintiffs meets that standard. (*Id.* at 8-10.)

Plaintiff responded n her reply memorandum to defendant's argument that the timeliness of the motion should be judged by the "good cause" standard of Rule 16 and showed that her motion meets that standard too. (ECF No. 153 at 7-13.)

Accordingly, the Court should reject defendant's claim of "concession."

3. Defendant's arguments about delay and prejudice ignore its nearly two-and-a-half-year delay in moving for judgment on the pleadings

This case was filed on February 27, 2020. (ECF No. 1.) Defendant filed its answer to the original complaint on August 7, 2020 (ECF No. 27) and included the affirmative defense that its challenged policy was required, *inter alia*, by "orders implemented by the Circuit Court of Cook County."[3] (ECF No. 27 at 7, Affirmative Defense 3.)

[2] The motion to add parties would require an amendment to the amended complaint which would be "governed by the generally liberal standards of Rule 15 for amending pleadings." *Ali v. City of Chicago*, 34 F.4th 594, 602 n.1 (7th Cir. 2022).

[3] Defendant reiterated this defense in its answer to the amended complaint, ECF No. 63 at 23 Affirmative Defense 3.)

Defendant could have filed with its answer a Rule 12(c) motion for judgment on the pleadings.[4] Instead, defendant waited until July 19, 2022 to file such a motion. (ECF No. 115.) Defendant explained its delay by citing the recent decision of the Court of Appeals in *Mitchell v. Doherty*, 37 F.4th 1277, 1279 (7th Cir. 2022) (ECF No. 109 at 3-4.) *Mitchell*, however, has nothing to with "orders implemented by the Circuit Court of Cook County," but rejected a claimed Fourth Amendment right to a prompt bond hearing.

Defendant devoted a single paragraph of its motion for judgment on the pleadings to "orders implemented by the Circuit Court of Cook County."

> Moreover, on June 17, 2015, the Honorable Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, promulgated General Administrative Order No. 2015-06 ("GAO 2015-06"), which sets forth "Procedures for Arrests on Illinois Intrastate Warrants Issued Outside of Cook County."[5] In relevant part, GAO 2015-06 states that persons arrested within Cook County "on an arrest warrant issued by an Illinois state court outside of Cook County *shall be required to appear in bond court* in the appropriate district or division of this court." (Ex. A, GAO 2015-16 (emphasis added).) In addition to the Criminal Code providing for the presentation of Plaintiffs to bond court, the City was also obligated to present Plaintiffs to bond court on their out-of-county warrants, consistent with GAO 2015-06.

(ECF No. 115 at 19.)

While this terse argument ultimately prevailed before the predecessor judge, it is obvious that defendant could advanced this argument when it filed its answer to the original complaint on August 7, 2020. Defendant should not be heard to complain about delay by plaintiff.

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[4] Under Rule 12(c), a motion for judgment on the pleadings may be filed at any time "[a]fter the pleadings are closed—but early enough not to delay trial."

4. Defendant did not announce its intention to move for summary judgment on Kennedy's individual claim until after it deposed her

Defendant asserts that it intended to challenge Kennedy's standing before deposing her. (ECF No. 158 at 4.) This claim is belied by the record.

In the joint status report filed on December 8, 2022 (ECF No. 138) — before plaintiff's deposition on February 3, 2023 — the parties agreed that the district court should set a schedule for summary judgment motions after ruling on the then pending motion (ECF No. 102) for class certification. Defendant adopted a new position after deposing plaintiff, stating the following in the joint status report filed on February 10, 2023:

> However, based on Plaintiff's testimony during her February 3, 2023 deposition, the City intends to file a motion for summary judgment on Plaintiff's claims, and will do so as expeditiously as is practicable.

(ECF No. 146 at 3.)

Defendant thus admitted that its intent to file a motion for summary judgment was triggered by "Plaintiff's testimony during her February 3, 2023 deposition." Announcement of this intent on February 10, 2023 is the starting date for the timeliness clock. The Court should reject defendant's argument that the clock started earlier.

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