

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

JOHN SMENTEK, MALCOLM PATTON,)	
AND MELVIN PHILLIPS,)	
)	
<i>Plaintiff,</i>)	
)	No. 09 CV 00529
-vs-)	
)	<i>(Judge Lefkow)</i>
SHERIFF OF COOK COUNTY,)	
and COOK COUNTY, ILLINOIS)	
)	
<i>Defendants.</i>)	

SECOND AMENDED COMPLAINT

Pursuant to leave of Court, plaintiffs file this second amended complaint and, by counsel, allege as follows:

1. This is a civil action arising under 42 U.S.C. §1983. The jurisdiction of this Court is conferred by 28 U.S.C. §1343.
2. Defendants are the Sheriff of Cook County and Cook County, Illinois. The Sheriff is sued in his official capacity only.
3. Defendants are responsible for providing medical and dental care to prisoners at the Cook County Jail.
4. Defendants have at all times known that broken, infected, or otherwise diseased teeth and gums can be excruciatingly painful and, if untreated, can result in serious permanent injury.
5. Defendants have also at all times known that dental care is one of the most important medical needs of inmates.
6. At all times relevant, defendants have declined to require a dental screening of persons being processed into the jail and have required

prisoners who were in need of dental treatment to endure a lengthy wait before receiving treatment.

7. In 2007, defendants effectively discontinued dental services by eliminating the positions of all but one dentist, who was to be responsible for the care of the ten thousand persons.
8. Defendants' above described actions were taken in deliberate indifference to the dental needs of prisoners at the Cook County Jail.
9. Plaintiff John Smentek was confined at the Cook County Jail from September 22, 2007 to March 14, 2008.
 - a. Within two weeks of entering the jail, Smentek began to experience severe tooth pain and submitted a request for dental services.
 - b. Plaintiff Smentek did not receive a response to his first request for dental services. Thereafter, Smentek submitted numerous additional requests for dental services.
 - c. Plaintiff Smentek did not receive any dental services while he was confined at the Jail.
 - d. On or about March 14, 2008, Smentek was transferred to the Illinois Department of Corrections.
 - e. While in the Illinois Department of Corrections, Smentek received dental services and was required to undergo fourteen or fifteen tooth extractions.
 - f. As the result of defendant's policies, plaintiff Smentek experienced great pain and suffering and incurred permanent damage to his mouth.

10. Numerous other prisoners at the Cook County Jail have experienced similar injuries as a result of defendants' policy of requiring prisoners who are in need of dental treatment to endure a lengthy wait before receiving treatment. Accordingly, plaintiff Smentek brings this action individually and pursuant to Rule 23(b)(3) for

All persons who, while confined at the Cook County Jail on and after June 29, 2005, made a request for treatment of dental pain and were not treated by a dentist within 7 days of that request.

11. Plaintiff Malcolm Patton entered the Cook County Jail on November 17, 2008 and is presently confined in Division 1 at the Jail.
- a. In January of 2009, Patton began to experience severe tooth pain, accompanied by bleeding gums.
 - b. Between January and April of 2009, Patton submitted more than ten requests to see a dentist.
 - c. Patton began to file grievances after his requests for dental services were ignored.
 - d. Patton filed his first grievance in April of 2009 and was "referred to dental services."
 - e. Patton filed another grievance in June of 2009 and was advised on June 17, 2009 that he would be scheduled for "dental sick call."
 - f. Patton had not seen a dentist as of July 10, 2009, and is presently experiencing severe tooth pain, bleeding gums, and headaches.
12. Plaintiff Melvin Phillips entered the Cook County Jail on February 12, 2008 and is presently confined in Division 9 at the Jail.

- a. In March of 2009, Phillips began to experience severe tooth pain when a filling came loose.
 - b. Between March and May of 2009, Phillips submitted more than ten requests to see a dentist.
 - c. Phillips has to date filed three grievances complaining about his unfulfilled need to see a dentist. None of these grievances resulted in treatment by a dentist before Phillips sought joined in this lawsuit.
 - d. On July 27, 2009, while the motion to add Phillips as a plaintiff was pending, a dentist at the jail examined Phillips. The dentist concluded that two extractions were required to alleviate Phillips' suffering and that this surgery could not be performed until X-rays were taken of Phillips' jaw.
 - e. As of September 3, 2009, X-rays have not been taken of Phillips' jaw and he had not been treated for his increasingly painful condition. Phillips is in constant pain and, because of the pain, is unable to sleep through the night.
13. Plaintiffs Patton and Phillips are experiencing pain and are incurring physical injury as the direct and proximate result of defendants' deliberate indifference to the dental needs of prisoners at the Cook County Jail.
14. Many prisoners at the Jail in addition to Patton and Phillips are incurring physical injury from defendants' refusal to provide adequate dental services. There is no adequate remedy at law for defendants' refusal to provide adequate dental services. Accordingly, plaintiffs Patton and Phillips bring this action pursuant to Rule 23(b)(2) of the Federal Rules of Civil

Procedure to obtain prospective injunctive relief for

All persons presently confined at the Cook County Jail who are experiencing dental pain and who have waited for more than seven days after having complained about that pain without having received treatment by a dentist.

15. Plaintiffs hereby demand trial by jury on their claims for damages.

Wherefore plaintiffs request that appropriate injunctive relief be granted for the class of persons presently confined at the Jail who are in need of dental services, that appropriate damages be awarded to each member of the class proposed by plaintiff Smentek, and that the Court grant whatsoever other relief as may be appropriate.

/s/ Kenneth N. Flaxman

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Michael L. Gallagher, ASA, 500 Daley Center, Chicago, IL 60602, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none.

/s/ Kenneth N. Flaxman

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