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

KEITH ROGERS,	)	
	)	
Plaintiff,	)	No. 15 C 11632
	)	
v.	)	
	)	Judge Edmond E. Chang
SHERIFF OF COOK COUNTY AND COOK COUNTY, ILLINOIS	)	
	)	
	)	
Defendants.	)	

ORDER

This Order addresses two pending motions filed by Keith Rogers.

Leave to File Second Amended Complaint. First, Rogers moves to file a second amended complaint to add two individuals as named plaintiffs, as well as additional claims under the American with Disabilities Act and the Rehabilitation Act. R. 110, Mtn. Amend ¶¶ 1-9. The Defendants object under Federal Rule of Civil Procedure 16(b), because Rogers has not shown "good cause" for the amendment. R. 113, Opp. Mtn. Amend at 3.[1] But Rogers correctly points out that the Court vacated the Rule 16(b) deadline in this case, R. 114, Pl.'s Reply at 1 (citing R. 40, 6/15/16 Minute Entry), and did not reset it after deciding a partial dismissal motion and discovery disputes arose. So Rogers is not required to show "good cause" for the proposed amendment. Instead, the proposal is subject only to Federal Rule of Civil Procedure Rule 15(a)(2), which instructs courts to give leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). The Seventh Circuit has elaborated that amendments should be allowed "unless there is good reason—futility, undue delay, undue prejudice, or bad faith—for denying leave to amend." *Life Plans, Inc. v. Sec. Life of Denver Ins. Co.*, 800 F.3d 343, 358 (7th Cir. 2015).

[1]R. 113 was filed by defendant Cook County. Opp. to Mtn. Amend at 1. The Sheriff of Cook County filed a motion to join in Cook County's opposition shortly thereafter, which the Court granted. R. 119, Mtn. to Join; R. 124, 4/18/18 Minute Entry.

There is no reason to deny leave to amend here. The first proposed amendment is the addition of two named plaintiffs—James Hill and Wanda Hollins. Mtn. Amend, Exh. 1, Proposed Second Amend. Compl. ¶ 2. The Defendants argue that this amendment is unduly prejudicial at this stage of the litigation when, for example, they have already disclosed an expert report. Opp. Mtn. Amend. at 4. But Rogers convincingly argues that this amendment was triggered by the Defendants' Rule 26(a)(2)(C) expert summaries, in which they disclosed a witness who will challenge Rogers as a class representative.[2] Mtn. Amend ¶ 6. Nor had fact discovery completely closed in this case; because it was obvious that the defense would at least offer its own employees as experts under Rule 702, the Court intentionally set Rule 26(a)(2)(C) summaries *within* the fact-discovery period. *See* R. 93, 10/11/17 Minute Entry (setting close of fact discovery as 2/8/18 and deadline for Rule 26(a)(2)(C) summaries as 12/11/17). As a result, the proposed amendment will not cause an undue delay, nor are the Defendants significantly prejudiced by adding the two additional plaintiffs. So the motion for leave to amend is granted as to the new plaintiffs. *See Phillips v. Ford Motor Co.*, 435 F.3d 785, 787 (7th Cir. 2006) ("Substitution of unnamed class members for named plaintiffs who fall out of the case because of settlement or other reasons is a common and normally an unexceptionable ('routine') feature of class action litigation both in the federal courts and in the Illinois courts.").

It is also granted as to Rogers's proposed additional claims under the Americans with Disabilities Act and the Rehabilitation Act, although this certainly presents a closer call. *See* Mtn. Amend ¶ 9. The statutory claims introduce another legal theory into the case, but the Defendants did not meaningfully contest the addition of these claims in their Opposition. Even if they had, there is a good chance that the Court would have granted the amendment over the objection, because any additional discovery that is required should be modest, given the factual overlap between these claims and Rogers's constitutional claims. So there is no reason to deny Rogers leave to add these claims. The motion for leave to file an amended complaint is granted in its entirety.

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[2]Neither party provides a satisfactory explanation of the challenge that the Defendants' expert plans to make against Rogers, other than to quote his opinion that Rogers's experience was "atypical of detainees admitted to [Opioid Treatment Program]." Mtn. Amend at 2. Nonetheless, the Court accepts as true Rogers's claim that he was not aware of this defense until the Defendants' Rule 26(a)(2)(C) disclosures, as the Defendants do not contest this in their briefing.

Rogers shall file the Second Amended Complaint as a separate docket entry, and the Defendants shall answer by April 26, 2019.

Time Limit on Detainee Data. Rogers's second motion seeks to expand the time period for discoverable detainee data from January 20, 2014 to April 30, 2018. R. 115, Mtn. Vacate Temporal Limitation ¶ 3; R. 123, Pl.'s Reply at 9. The Defendants counter that Rogers's motion does not comply with the previous order and that he should not now be permitted to "redefine the litigation." R. 121, Defs.' Resp at 1, 3. It is true that Rogers did not really follow the prior instructions: in June 2016, the Court denied the Defendants' motion to dismiss and explained that Rogers could "seek data concerning other detainees on Count 2 [the delay in providing the first methadone dosage], but must start with the time period of 9/20/2013 through 1/20/2014." R. 41, 6/27/16 Minute Entry. Because the data on which Rogers relied (which was from several years ago) showed that many detainees did get the first methadone dose before Day Four, the Court balanced the relevance, burden, and need of the discovery by limiting the time period of the detainee data. The Court also explained that, "if discovery for this time period shows a reason to keep going, then the time period can be expanded." *Id.*

Although Rogers did not label his Counts in the Amended Complaint, *see* R. 24, Amend. Compl, the Court adopted the numbering used by the Defendants in their motion to dismiss, which defined Count Two as Rogers's claim that "Defendants had a widespread practice or custom at CCJ of inordinate delay in providing methadone treatment to detainees." R. 25, Mtn. Dismiss at 2. As explained above, Rogers was supposed to start with detainee data from 9/20/2013 through 1/20/2014. And if he wanted to expand the relevant time-period, he was supposed to present the Court with discovery that bolstered Count Two. Rogers instead argues that the time-period should be expanded to "permit [him] to identify all members of the putative class" and to help him "rebut any claim that [the] defendants do not actually apply the written policy [requiring tapering]." Mtn. Vacate Temporal Limitation ¶ 3; Pl.'s Reply at 5. Neither of those purposes is directly tied to Count Two or the original purpose of the discovery.

Having said that, at this point it is clear that the burden on the Defendants of producing the detainee data that Rogers wants (as very distinct from the underlying medical records, which Rogers does *not* want) is minimal. Rogers just wants an expanded version of the already-produced Excel spreadsheet that "identifies, through the jail identification number, the date the detainee entered the Jail, as well as the dates that the detainee received methadone." Pl.'s Reply at 4. This request is not

overly burdensome, especially if the Defendants maintain this record in the ordinary course of business, as Rogers asserts. *Id.* Also, Rogers is permitted to obtain information about the detainees' length of stay, because that information is relevant to both his delay and tapering claims. *See id.* at 5.[3]

The parties shall confer about the discovery and discuss a timeline for production. A status hearing is set for April 19, 2019, at 10:15 a.m. to get an update and set the schedule for the remainder of the case.

ENTERED:

s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: March 29, 2019

[3]The Defendants assert that additional discovery is unnecessary in light of the medical records already produced in the case: "If Plaintiff cannot make out a claim with 50,000 pages of medical records from the [Opioid Treatment Program], then perhaps a claim cannot properly be made." Defs.' Resp. at 3. This argument is unpersuasive because it is not at all clear Rogers even requested these records, *see* Pl.'s Reply at 7, and he has stated that he does not want any additional medical records moving forward, *id.* at 8.