

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LOWELL B. SMITH, et al.)	
)	
Plaintiffs,)	
)	
v.)	No. 1:20-cv-03248-JPH-MPB
)	
STANLEY KNIGHT, et al.)	
)	
Defendants.)	

**Order Denying Motion to Certify Class Action, Granting Motion for Extension of Time,
and Granting Plaintiff Matthew Forgey's Motion to Dismiss Without Prejudice**

On December 18, 2020, twelve plaintiffs filed this action against numerous defendants alleging violations of their constitutional rights under 42 U.S.C. § 1983. Dkt. 1. Specifically, the plaintiffs allege that the defendants failed to take precautions to prevent the introduction and spread of the COVID-19 virus at Plainfield Correctional Facility. *Id.* Upon receipt of the complaint, the Court notified the plaintiffs of the downsides of joint litigation among prisoners and gave each plaintiff through January 22, 2021 to notify the Court whether he would like to proceed or voluntarily dismiss this action without prejudice. Dkt. 3. The Court further instructed any plaintiffs who wished to proceed to either pay the filing fee or file an individualized motion for leave to proceed *in forma pauperis* by January 22, 2021. *Id.* The plaintiffs have filed various motions in response to the Court's Order. The Court will now address three of these motions.

I. Motion to Certify Class Action

The plaintiffs have filed a motion for class certification, stating that they intended this action to be a class action rather than joint litigation among prisoners. Dkt. 21. "A class 'may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of [Federal Rule of Civil Procedure] 23(a) have been satisfied.'" *CE Design Ltd. v. King Architectural Metals*,

Inc., 637 F.3d 721, 723 (7th Cir. 2011) (quoting *General Telephone Co. v. Falcon*, 457 U.S. 147, 161 (1982)). Under Rule 23(a), one or more members of a class may sue on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). "The party seeking certification bears the burden of demonstrating that certification is proper by a preponderance of the evidence." *Bell v. PNC Bank, Nat. Ass'n*, 800 F.3d 360, 373 (7th Cir. 2015).

The motion to certify class action, dkt. [21], is **denied**. The plaintiffs, as pro se litigants, cannot adequately represent a class. "[I]t is generally not an abuse of discretion for a district court to deny a motion for class certification on the ground that a pro se litigant is not an adequate class representative." *Howard v. Pollard*, 814 F.3d 476, 478 (7th Cir. 2015); *see also Goodvine v. Meisner*, 608 F. App'x 415, 417 (7th Cir. 2015) (stating that pro se status is a sound reason for denying class certification).

II. Motion for Extension of Time

Plaintiff Lowell Smith has filed a motion for extension of time, requesting additional time to determine whether to voluntarily dismiss this action without prejudice or proceed. Dkt. 20. He states the plaintiffs want to wait until after the Court rules on the motion to certify class action before deciding whether to proceed. This motion, dkt. [20], is **granted**. The Court has denied the motion to certify class action, and each plaintiff shall have **through February 22, 2021**, to notify the Court whether he would like to voluntarily dismiss this action without prejudice or proceed. If

a plaintiff fails to notify the Court in the time provided, the Court may dismiss his claims without further warning or opportunity to show cause.

Additionally, any plaintiff that wishes to proceed shall have **through February 22, 2021**, to either pay the \$402 filing fee or file an individualized motion for leave to proceed *in forma pauperis*. Failure to take either action in the time provided may result in the plaintiff's claims being dismissed without further notice or opportunity to show cause. Any plaintiff who moves for leave to proceed *in forma pauperis* must attach a record of the transactions associated with his inmate trust account for the six-month period immediately preceding the filing of this action on December 18, 2020. 28 U.S.C. § 1915(a)(2).

Plaintiffs Willie Powell and Terrance Flynn have already filed motions for leave to proceed *in forma pauperis*. Dkts. 16, 17, 18. The Court will not rule on these motions until after February 22, 2021, to allow these plaintiffs time to determine whether to proceed with this action in light of the Court's denial of the motion to certify class action.

III. Motion to Dismiss Without Prejudice

Plaintiff Matthew Forgey's motion to dismiss his claims without prejudice, dkt. [19], is **granted**. No Judgment shall issue under these circumstances, but the **clerk is directed** to terminate Matthew Forgey as a plaintiff on the docket.

IV. Conclusion

The motion to certify class action, dkt. [21], is **denied**. The motion for extension of time, dkt. [20], is **granted**. Each plaintiff shall have **through February 22, 2021**, to notify the Court if he wishes to voluntarily dismiss without prejudice his claims or proceed. If a plaintiff elects to proceed, he shall either pay the filing fee or file an individualized motion for leave to proceed *in forma pauperis* by **February 22, 2021**. Plaintiff Matthew Forgey's motion to dismiss without

prejudice, dkt. [19], is **granted**. The **clerk is directed** to terminate Matthew Forgey as a plaintiff on the docket.

SO ORDERED.

Date: 2/1/2021

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

LOWELL B. SMITH
251281
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

DANNY FLOWERS
862382
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

MATTHEW H. FORGEY
175408
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

PATRICK B. COLLINS
856189
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

WILLIE POWELL
973305

PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

OLEGARIO PENELOZA-DIAZ
281609
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

JERALD BROUDE
964706
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

BILLY JOHNSON
251783
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

TERRANCE D. FLYNN
159883
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

ANDRA W. RAGLAND
220736
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

CHRISTOPHER M. OROS
171824
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168

RICHARD M. REEVES
979140
PLAINFIELD - CF
PLAINFIELD CORRECTIONAL FACILITY
Inmate Mail/Parcels
727 MOON ROAD
PLAINFIELD, IN 46168