

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

LENORE R. OWENS, JEAN L. JEWETT,)
LORI L. BUKSAR, and JULIA SNYDER, on)
behalf of themselves, individually, and on behalf)
of all others similarly situated,)

Case No. 14-cv-4068

Plaintiffs,

Judge Sharon Johnson Coleman

v.

ST. ANTHONY MEDICAL CENTER, INC.,)
THE FRANCISCAN SISTERS OF)
CHICAGO SERVICE CORPORATION,)
FRANCISCAN COMMUNITIES, INC. f/k/a)
FRANCISCAN HOMES & COMMUNITY)
SERVICES, FRANCISCAN HOLDING)
CORPORATION, DONNA GOSCIEJ,)
LINDA HORNYAK, the SAMC)
RETIREMENT COMMITTEE, the members)
of the SAMC RETIREMENT COMMITTEE,)
LEONARD WYCHOKI, WALTER)
GARBARCZYK, JULIE SECVIAR,)
CHESTER LABUS, and SISTER HELENE)
GALUSZKA, the members of the FSCSC)
BOARD OF DIRECTORS, SISTER M.)
FRANCIS CLARE RADKE, ANNETTE)
SHOEMAKER, JILL KRUEGER,)
LAWRENCE LEAMAN, SANDRA SINGER,)
SUSAN NORDSTROM LOPEZ, and JOHN)
and JANE DOES, each an individual, 1-40,)

Defendants.

ORDER

Following the Supreme Court’s ruling in *Advocate Health Care Network v. Stapleton*, 137 S.Ct. 1652 (2017), the plaintiffs move for leave to file a third amended complaint. That motion [250] is granted. The plaintiffs are to file their third amended complaint by 12/5/2017.

STATEMENT

This case was filed in June 2014. Class discovery was completed in 2014 and a motion for class certification was briefed. That motion was subsequently denied without prejudice and this case was stayed while a potentially dispositive case, *Stapleton v. Advocate Health Care Network*, worked its way through the Seventh Circuit and the Supreme Court. Following the Supreme Court's decision in *Stapleton v. Advocate Health Care Network*, 137 S.Ct. 1652 (2017), the plaintiffs filed the present motion, which amends the complaint to alter the allegations concerning the subject matter of *Stapleton* and to add, in the alternative, state law claims for breach of contract, unjust enrichment, breach of fiduciary duty, and negligence.

Leave to amend a complaint is to be freely given when justice so requires. Fed. R. Civ. P. 15(a). Leave to amend need not be freely given, however, where there has been undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies through prior amendments, where amendment will incur undue prejudice to the opposing party, or where amendment would be futile. *Airborne Beepers & Video, Inc. v. AT & T Mobility LLC*, 499 F.3d 663, 666 (7th Cir. 2007) (quoting *Forman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962)).

The defendants' argument to the contrary notwithstanding, the Court does not believe, and has no basis to find, that these amendments are the result of bad faith or "sharp practice." The Court is substantially more receptive, however, to the defendants' claims of undue delay and prejudice. This case has been pending for some time and at quite some expense to entities and individuals ill-equipped to bear the cost of such litigation. The addition of novel claims will likely require the reopening of class discovery and the re-drafting of those substantive motions previously filed. The Court, however, does not believe that the assertion of the state law claims at this time constitutes undue delay sufficient to warrant rejecting the proposed amendment. Although the state law claims were always available to the plaintiffs, it was not unreasonable for them to refrain from

alleging a seemingly unnecessary alternative theory of liability. Had the Seventh Circuit's decision in *Stapleton* been affirmed, the assertion of these alternative theories would have been unnecessary to the plaintiffs' case and would have needlessly increased the complexity and cost of this litigation to no benefit. Once *Stapleton* was decided by the Supreme Court, the plaintiffs moved swiftly to amend their complaint to add these alternative theories. Although the Court believes that it might have been advisable to allege the alternative theories sooner—especially given the plaintiffs' professed desire for expedience—the Court does not believe that the plaintiffs' delay in asserting these claims was unreasonable or unwarranted. Nor does this Court believe that the prejudice to the defendants, who repeatedly asked this Court to refrain from addressing substantive issues until *Stapleton* had been decided, warrants depriving the plaintiffs of the ability to amend their complaint following that decision.

The defendants also contend that the proposed amendments are futile because they are time barred. This argument, however, depends upon an assumption that Indiana's statute of limitations governs. The plaintiffs have offered authority which appears to squarely rebut that assumption, although the briefing before this Court is inadequate to facilitate a final determination on that point. The defendants have therefore failed to establish that the proposed amendments are futile.

The Court accordingly concludes that, based on the history of this case, the interests of justice require that the plaintiff's motion for leave to file a third amended complaint be granted. The Court cautions that further amendments or unnecessary delays will be disfavored.

IT IS SO ORDERED.

Date: November 28, 2017



Entered: _____
SHARON JOHNSON COLEMAN
United States District Court Judge