

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

DISENIA CANCEL,)
)
 Plaintiff,)
)
 v.) No. 08 C 951
)
 CITY OF CHICAGO, et al.,)
)
 Defendants.)

MEMORANDUM ORDER

When defendants City of Chicago and its Police Superintendent Jody Weis filed a motion to dismiss, pursuant to Fed. R. Civ. P. ("Rule") 12(b)(6), the putative Class Action Complaint filed against them by Disenia Cancel ("Cancel"), this Court ordered Cancel's counsel to respond to that motion and set a next status hearing date for April 22. Cancel's responsive memorandum has just been filed, and the motion is ripe for a swift decision (although, as explained later, the April 22 status hearing date will be retained).

Defense counsel have hung their Rule 12(b)(6) legal hat on our Court of Appeals' decision in Jones v. Takaki, 38 F.3d 321 (7th Cir. 1994). But just as this Court had orally indicated its initial reaction, at the time of presentment of the motion, to the effect that Jones did not control because of the sharp contrast between what was at issue there and the circumstances posed by Cancel's Complaint, her counsel's response has provided chapter and verse (including not only a perceptive distinction

between the Jones situation and this one, but also some appropriate authority from the Supreme Court and elsewhere) that calls for rejecting the motion.

Cancel's responsive memorandum also goes on to advance other grounds for the viability of the Complaint, and this Court finds them persuasive as well. Accordingly the Rule 12(b)(6) motion is denied, and defendants are ordered to answer the Complaint on or before May 2, 2008.

In the meantime, however, the April 22 status hearing will go forward. At that time the parties' counsel are expected to come prepared to discuss Cancel's pending motion for class certification.



Milton I. Shadur
Senior United States District Judge

Date: April 17, 2008