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Iliana Llaneras

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ASIA ECONOMIC INSTITUTE, a
California LLC; RAYMOND
MOBREZ an individual; and ILIANA
LLANERAS, an individual,

Case No.: 2:10-cv-01360-SVW-PJW

The Honorable Stephen V. Wilson

NOTICE OF MOTION AND MOTION
FOR LEAVE TO AMEND
PLAINTIFFS' FIRST AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF

XCENTRIC VENTURES, LLC, an
Arizona LLC, d/b/a as BADBUSINESS
BUREAU and/or
BADBUSINESSBUREAU.COM
and/or RIP OFF REPORT and/or
RIPOFFREPORT.COM; BAD
BUSINESS BUREAU, LLC, organized
and existing under the laws of St.
Kitts/Nevis, West Indies; EDWARD
MAGEDSON an individual, and DOES
1 through 100, inclusive,

[[PROPOSED] SECOND AMENDED
COMPLAINT LODGED
CONCURRENTLY HEREWITH]

Date: September 20, 2010
Time: 1:30 p.m.
Courtroom: 6

1
2 TO ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT ON September 20, 2010 at 1:30 p.m., in
4 Courtroom 6 of the above-entitled court, located at 312 N. Spring Street in Los
5 Angeles, California, Plaintiffs Asia Economic Institute LLC, Raymond Mobrez,
6 and Iliana Llaneras ("Plaintiffs") will and hereby does move this Court for an order
7 granting leave to file the [Proposed] Second Amended Complaint, lodged currently
8 herewith, pursuant to Federal Rule of Civil Procedure 15. Plaintiffs wish to
9 dismiss the RICO causes of action under 18 U.S.C. § 1962(c) and (d) to the extent
10 they are based on predicate acts of wire fraud, 18 U.S.C. § 1343. Plaintiffs have
11 requested Defendants to stipulate to the amendment proposed by this Motion, and
12 this Motion should be granted, based upon the following grounds:

- 13 • First, this Court should permit Plaintiffs to amend the pleadings as Plaintiffs
14 are concurrently filing a Notice of Non-Opposition in response to
15 Defendants' pending motion to dismiss the First and Second Causes of
16 Action for violations of the RICO statute, 18 U.S.C. § 1962(c) and (d), with
17 wire fraud, 18 U.S.C. § 1343, as the predicate acts, currently set for a
18 hearing date of September 20, 2010 and responding by eliminating those the
19 First and Second Causes of Action, thus mooted Defendants' pending
20 Motion to Dismiss;
- 21 • Second, this Court should permit Plaintiffs to amend the pleadings because
22 this Court has bifurcated the action to address RICO claims only and
23 Plaintiffs will promptly notice and file a motion for September 20, 2010 to
24 remand the remaining causes of action, which all arise under state law, to
25 California Superior Court for the County of Los Angeles;
- 26 • Third, this Court should permit Plaintiffs to amend the pleadings in the
27 interests of justice and judicial economy, as the proposed amendment
28

1 eliminates the federal causes of action, leaving only Plaintiffs' state law
2 causes of action, on which this Court has not yet ruled;

- 3 • Fourth, this Court should permit Plaintiffs to amend the pleadings because
4 Defendants have formally requested Plaintiffs to strike or withdraw certain
5 factual allegations and the proposed amendment eliminates certain of those
6 factual allegations without adding new allegations, thus streamlining and
7 narrowing the issues for litigation.

8 The Motion shall be based upon this Notice, the attached Memorandum of
9 Points and Authorities, a copy of the proposed Second Amended Complaint, which
10 is attached hereto, and such other and further matters that may be presented at the
11 hearing thereof. This Motion is made following Plaintiffs' written request on
12 August 14, 2010 to arrange a conference of counsel in accordance with Local Rule
13 7-3, to which Defendants did not respond.

14
15 Respectfully submitted,

16 DATED: August 16, 2010

17 By: /s/ Daniel F. Blackert

18 DANIEL F. BLACKERT
19 LISA J. BORODKIN
20 Attorneys for Plaintiffs,
21 Asia Economic Institute LLC,
22 Raymond Mobrez, and Iliana
23 Llaneras
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

This Court has bifurcated this action to consider only the federal causes of action arising under the RICO statute. DN-94 at 53. Pursuant to this Court's Order of July 19, 2010 (DN-94), Plaintiffs filed their First Amended Complaint on July 27, 2010 (DN-96). Defendants responded with a motion to dismiss on August 6, 2010 (DN-110). In addition, on August 3, 2010, Defendants served a proposed motion under Federal Rule of Civil Procedure 11 requesting that Plaintiffs correct or amend the First Amended Complaint to eliminate certain claims and allegations.

In response to the pending Motion to Dismiss and Defendants' request to correct or amend the pleadings, Plaintiffs filed a Notice of Non-Opposition as to the First and Second Causes of Action. DN-115. Plaintiffs now seek leave to file a Second Amended Complaint that would eliminate the First and Second Causes of Action for RICO violations targeted in Defendants' Motion To Dismiss. Plaintiffs requested Defendants to stipulate to the filing of the Second Amended Complaint to resolve the pending Motion to Dismiss and to some of Defendants' Rule 11 request, but Defendants did not respond. See Declaration of Daniel F. Blackert (DN-114) at ¶5.

Plaintiffs will, concurrently with the Motion to Dismiss and this Motion for Leave to Amend the Pleadings, move for an order remanding the remaining state law causes of action to state court. This Court has not ruled on the merits of Plaintiffs' state law claims and there has been no delay from the proposed amendment. Therefore, Plaintiffs respectfully request that this Court honor the strong policy favoring liberal amendment of pleadings, and grant Plaintiffs leave to file the proposed Second Amended Complaint, lodged concurrently herewith, eliminating the RICO claims predicated on wire fraud and certain factual allegations as requested by Defendants.

II. Argument

A. Judicial Policy Dictates that Courts Grant Leave to Amend Liberally So that Cases Are Decided on the Merits.

According to Federal Rule of Civil Procedure 15, "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served...[o]therwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party." Fed. R. Civ. P. 15(a). Where leave of the court is sought, Rule 15 states, "[L]eave shall be freely given when justice so requires." *Id.* In *Foman v. Davis*, the Supreme Court held that [i]n the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be "freely given." See *Foman v. Davis*, 371 U.S. 178, 182 (1962). In *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, the Court stated that "the court must be very liberal in granting leave to amend a complaint," noting that "[t]his rule reflects an underlying policy that disputes should be determined on their merits, and not on the technicalities of pleading rules." See *Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, 989 F.Supp. 1237, 1241 (N.D. Cal. 1997).

B. The Factors Considered by Courts In Granting Leave to Amend Favor Permitting Plaintiffs to File the Second Amended Complaint.

A district court should consider the following factors when deciding whether to grant leave to amend: (1) undue delay; (2) bad faith; (3) repeated failure to cure

1 deficiencies by amendments previously allowed; (4) undue prejudice to the
2 opposing party by virtue of allowances of the amendment; and (5) futility of
3 amendment. *See Forman*, 371 U.S. at 182. Prejudice to the opposing party is “the
4 most critical” of all the factors: “Where there is a lack of prejudice to the opposing
5 party and the amended complaint is obviously not frivolous, or made as a dilatory
6 maneuver in bad faith, it is an ‘abuse of discretion’ to deny leave to amend.” *See*
7 *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973). Because there has
8 been no delay, there is no evidence of bad faith, failure to cure deficiencies, undue
9 prejudice, or futility of amendment, good cause exists to allow Plaintiffs leave to
10 file the Proposed Second Amended Complaint eliminating the RICO claims
11 predicated on wire fraud and certain factual allegations, and allowing Plaintiffs
12 leave to seek remand of the remaining state law claims to state court.

13
14 **1. Defendants Cannot Show Prejudice Because They Have Moved**
15 **to Dismiss the First and Second Causes of Action for Violations of**
16 **RICO Predicated on Wire Fraud, Which Are Eliminated in the**
17 **Proposed Second Amended Complaint, and Plaintiffs Filed a**
18 **Notice of Non-Opposition as to the Motion to Dismiss the First**
19 **and Second Causes of Action.**
20

21 The party opposing amendment bears the burden of showing prejudice. *See*
22 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). Here, the
23 Defendants cannot show that they will suffer prejudice if the amendment is
24 allowed. The purpose of the Second Amended Complaint is to respond to
25 Defendants’ motion to dismiss regarding the First and Second Causes of Action for
26 RICO violations predicated on wire fraud by eliminating those claims targeted in
27 Defendants’ motion. Therefore, Defendants will not be able to show any prejudice
28 by allowing the filing of the Second Amended Complaint.

1 **2. Defendants Cannot Show Prejudice Because the State Law**
2 **Claims Have Been Bifurcated from the RICO Claims and Cannot**
3 **Show Delay Because Plaintiffs Will Promptly Move for Remand.**
4

5 Secondly, Defendants are not prejudiced because since April 19, 2010, this
6 Court had already bifurcated the action to consider only the federal RICO claims
7 and (DN-23), and in the Order of July 19, 2010 stated that Defendants' dispositive
8 motion with respect to the state law claims was "inappropriate" (DN-94 at 17:13-
9 20) and confirmed that this action remains bifurcated (DN-94 at 53-15). Therefore,
10 if this Court allows Plaintiffs to file the Proposed Second Amended Complaint,
11 only state law claims will remain. Plaintiffs have alleged state law fraud claims,
12 thereby rendering the RICO claims based on wire fraud duplicative and
13 extraneous.

14 There has been no delay in seeking amendment. Plaintiffs will be filing a
15 motion to remand this action back to state court. The motion will be heard
16 concurrently with Defendants' Motion to Dismiss. Plaintiffs filed a Notice of Non-
17 Opposition to Defendants' Motion to Dismiss as to the First and Second Causes of
18 Action arising under RICO. DN-115. However, as stated in the Notice of Non-
19 Opposition, Plaintiffs believe that Defendants' Motion to Dismiss was
20 inappropriate as to the Third, Eleventh and Twelve Causes of Action arising solely
21 under state law because this Court has bifurcated the action to address only federal
22 claims. DN-115 ¶¶D-F, DN-94 at 53.

23 Because this Court would have had discretion to retain or decline
24 jurisdiction over the state law claims if the Motion to Dismiss were granted, the net
25 effect of Plaintiffs filing its Notice of Non-opposition to the Motion to Dismiss and
26 simultaneously seeking a remand of the action to state court is not to delay any
27 resolution on the state law claims on the merits, and in fact conserves this Court's
28 resources in eliminating an unnecessary hearing on the motion to dismiss.

1 **3. Defendants Cannot Show Prejudice because they have**
2 **Requested Plaintiffs to Strike the Factual Allegations Eliminated**
3 **from the Proposed Second Amended Complaint and There Has**
4 **Been No Delay in Seeking the Amendment.**
5

6 Thirdly, Defendants have asked Plaintiffs to strike many of the factual
7 allegations that will be eliminated in the Second Amended Complaint. Therefore,
8 the filing of the Second Amended Complaint would amount to Plaintiffs giving
9 Defendants what they have requested.

10 Although Plaintiffs did not eliminate each and every allegation requested to
11 be withdrawn or corrected by Defendants, the Second Amended Complaint omits a
12 significant number of the factual allegations objected to by Defendants as
13 superfluous, and did not add any additional factual allegations. Therefore, the
14 elimination of certain factual allegations will help to streamline and narrow this
15 litigation for consideration of the state law claims on the merits.

16
17 **4. Defendants Cannot Show Prejudice or Delay Because**
18 **Plaintiffs Promptly Asked Defendants To Stipulate to the**
19 **Filing of the Second Amended Complaint.**
20

21 Finally, Plaintiffs contacted Defendants in attempt to stipulate to the filing of
22 the Second Amended Complaint eliminating the RICO claims. Defendants never
23 responded to these attempts. See Declaration of Daniel F. Blackert (DN-114) at
24 ¶5. However, these attempts to stipulate put Defendants on notice that Plaintiffs
25 would seek leave to file the Second Amended Complaint.

26 Plaintiffs are lodging concurrently herewith the Proposed Second Amended
27 Complaint, exclusive of exhibits, which are the same as those filed with the First
28 Amended Complaint. If this motion is granted, Plaintiffs will file the Second

1 Amended Complaint along with a complete set of exhibits, and with a manual
2 paper filing in accordance with Local Civil Rule 7-3. Therefore, Defendants cannot
3 show prejudice from the proposed amendment.
4

5 **III. Conclusion**
6

7 For the foregoing reasons, the motion should be granted.
8

9 Respectfully submitted,

10 DATED: August 16, 2010

11 By: /s/ Daniel F. Blackert

12 DANIEL F. BLACKERT
13 LISA J. BORODKIN
14 Attorneys for Plaintiffs,
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