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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMIL ALPERIN, et al.,

No. C-99-4941 MMC

Plaintiffs,

**ORDER DENYING REQUEST TO FILE
AMICUS BRIEF**

v.

THE FRANCISCAN ORDER, et al.,

Defendants.

The Court is in receipt of a letter, submitted August 10, 2009 by Franciscan Friars of California, Inc. ("FFCI") and the Province of St. Barbara ("Province"), by which said entities seek leave to file an amicus brief in connection with the pending motion to dismiss, filed June 12, 2009 by defendant Order of Friars Minor ("OFM").¹ On August 17, 2009, OFM filed a "Motion to Deny Leave" for FFCI and the Province to file their proposed amicus brief. On August 19, 2009, FFCI and the Province filed opposition to such motion.

Having read and considered the papers filed in support of and in opposition to the request for leave, the Court finds FFCI and the Province have failed to show they are entitled to the relief sought. In particular, as plaintiffs point out, the arguments advanced by FFCI and the Province are made in such entities' own interests and provide no aid to the

¹As plaintiffs note, FFCI and the Province's request should have been presented in a motion, rather than a letter.

1 Court in analyzing the issues before it. Rather, FFCI and the Province's attempt to
2 distinguish between a finding of an alter ego relationship for purposes of personal
3 jurisdiction and a finding of such a relationship for other purposes constitutes an improper
4 attempt to create a new issue in the instant action. See, e.g., Citizens Against Casino
5 Gambling in Erie County v. Kempthorne, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007)
6 (holding "[a]micus participation goes beyond its proper role is the submission is used to
7 present wholly new issues not raised by the parties"); Wyatt ex rel. Rawlins v. Hanan, 868
8 F. Supp. 1356, 1358-59 (M.D. Ala. 1994) (holding "[a]n amicus cannot initiate, create,
9 extend, or enlarge issues").

10 Accordingly, FFCI and the Province's request is hereby DENIED.

11 **IT IS SO ORDERED.**

12
13 Dated: August 21, 2009


MAXINE M. CHESNEY
United States District Judge