

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CHRISTINA SMITH, et al.,

Plaintiffs,

No. C 10-00010 JSW

v.

LEVINE LEICHTMAN CAPITAL
PARTNERS, INC., et al.,

Defendants.

**ORDER DENYING PLAINTIFFS
MOTION UNDER THE ALL
WRITS ACT AND RULE 23(D)**

Now before the Court is the motion against third-party attorneys, Defendants and their counsel under the All Writs Act and Federal Rule of Civil Procedure 23(d). This matter is now fully briefed and ripe for consideration. The Court finds that this matter is appropriate for disposition without oral argument and is deemed submitted. *See* Civ. L.R. 7-19(b). Accordingly, the hearing set for November 5, 2010 is HEREBY VACATED. Having carefully reviewed the parties' papers, considered their arguments and the relevant authority, and good cause appearing, the Court hereby denies Plaintiffs' motion.

In their reply brief, Plaintiffs clarify that they are no longer seeking to enjoin the malpractice action pending in state court. Instead, Plaintiffs' are seeking to enjoin the plaintiff in that action and her attorneys from filing any additional similar actions in any court other than the Northern District of California, bar such individuals from communicating with members of the class Plaintiffs seek to represent in the above captioned matter, and seek discovery from such individuals, as well as from Defendants in the above captioned matter and their counsel.

1 The Court will not enjoin potential future malpractice actions where Plaintiffs have not
2 demonstrated that such future actions are even likely to be filed. Moreover, such state law
3 claims must be filed in state court, not federal court.

4 The Court further declines to enjoin future communications in the absence of any
5 evidence that the plaintiff in the pending malpractice action, her attorneys, Defendants in the
6 above captioned matter, and/or their attorneys actually engaged in any wrongdoing. This Order
7 is without prejudice to Plaintiffs moving for similar relief if they obtain such evidence.

8 The remainder of Plaintiffs' motion seeks to obtain discovery from the plaintiff in the
9 pending malpractice action, her attorneys, Defendants in the above captioned matter, and their
10 attorneys. The Court declines to order discovery to be produced in the absence of formal
11 discovery requests. This Order is without prejudice to Plaintiffs formally seeking discovery
12 against the plaintiff in the pending malpractice action, her attorneys, Defendants in the above
13 captioned matter, and/or their attorneys in either the pending malpractice action or the above
14 captioned matter. If the parties dispute the scope of discovery, they should raise such issues in
15 response to the specific discovery requests. If Plaintiffs require additional discovery beyond the
16 limitations currently set, they should seek permission from the Court at such time.

17 To the extent the parties are unable to resolve disputes regarding specific discovery
18 requests, pursuant to Civil Local Rule 72-1, the Court HEREBY REFERS this matter to a
19 randomly assigned magistrate judge for resolution of such discovery disputes and for resolution
20 of all discovery matters.

21 **IT IS SO ORDERED.**

22
23 Dated: October 28, 2010



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

24
25
26
27 cc: Susan Imbriani