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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL DEPOSIT INSURANCE CORPORATION  
as Receiver for BANKUNITED, F.S.B,

Plaintiff,

vs.

ERIC K. HSING, an individual d/b/a K.C. &  
ASSOCIATES f/k/a K.C. APPRAISAL SERVICES,

Defendant.

And cross-action.

**Case No.: 12-CV-1530 YGR**

**ORDER GRANTING REVISED MOTION OF  
DEFENDANT AND COUNTER-CLAIMANT ERIC  
K. HSING TO AMEND HIS CROSS-COMPLAINT**

Defendant Eric K. Hsing, an individual d/b/a K.C. & Associates f/k/a K.C. Appraisal Services (“Hsing”) filed his “Answer to Complaint, Counterclaim, Joinder and Cross-Claim of Third Parties” (hereinafter, “Cross-Complaint”). Hsing’s previous motion having been denied without prejudice, he has filed a revised motion seeking to amend the Cross-Complaint to substitute the true names and capacities of a person sued as a “Roe” defendant in the Cross-Complaint and to join a party alleged to be necessary for complete relief. (*See* Dkt. No. 40.) Specifically, Hsing seeks to add Xun Sun aka Tommy Sun as a defendant to the Cross-Complaint, and to amend the Cross-Complaint to allege additional allegations to the effect that Xun Sun, aka Tommy Sun (son of Cross-Defendant Fu Tong Sun) was involved in the real estate transaction at issue in this litigation.

Plaintiff Federal Deposit Insurance Corporation as Receiver for BankUnited, F.S.B. has not filed an opposition.

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Having carefully considered the papers submitted and the pleadings in this action, and for the reasons set forth below, the Court hereby **GRANTS** the Revised Motion to Amend the Cross-Complaint.

Leave to amend is liberally granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Chodos v. West Pub. Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) (leave to amend granted with “extreme liberality”). Any challenge to the proposed amendment is usually deferred until after it has been filed unless it is clear that such amendment would be futile. *DCD Programs*, 833 F.2d at 188; *Saul v. United States*, 928 F.2d 829, 843 (9th Cir.1991). Futility is shown only if “no set of facts can be proved under the amendment that would constitute a valid claim or defense.” *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir.1988); *Abels v. JBC Legal Group, P.C.*, 229 F.R.D. 152, 157 (N.D. Cal. 2005).

Thus, the Court **GRANTS** the motion to amend the Cross-Complaint. Hsing shall file his amended Cross-Complaint, attached as the first part of Exhibit C to the Revised Declaration of Brian M. Sanders (Dkt. 40-1) no later than March 15, 2013.

**IT IS SO ORDERED.**  
**Date: March 11, 2013**

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE