

E-Filed 03/12/2010

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

10 FEDERAL TRADE COMMISSION,

No. C 09-03814 RS

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12 Plaintiff,

**ORDER GRANTING
ADMINISTRATIVE REQUEST TO
SET DEADLINE TO FILE AMENDED
COMPLAINT**

13 v.

14 MARK BENNING, et al.,

15 Defendants.
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17 _____

18 On February 22, 2010 this Court issued an order granting Defendant Benning's motion to
19 dismiss the FTC's Complaint. In the order, the Court granted the Commission leave to amend its
20 Complaint but did not set a deadline by which it needed to do so. On March 8, 2010, Benning filed
21 an administrative motion, pursuant to Local Rule 7-11, requesting that the Court impose a filing
22 deadline. The Commission timely opposed the motion; it contends that an administrative motion is
23 an improper vehicle for Benning's request. Local Rule 7-11 provides that "a party may require a
24 Court order with respect to miscellaneous administrative matters, not otherwise governed by a
25 federal statute, Federal or local rule or standing order of the assigned judge." The Commission
26 argues that the scheduling of amended pleadings is governed by Federal Rules of Civil Procedure
27 15(a)(2) and 16(b)(3)(A). Additionally, the FTC points out that Local Rule 16-10 states that a case
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1 management order should be used for “establishing deadlines for joining parties and amending
2 pleadings.” While the Commission’s quotations are accurately transcribed, the rules it cites
3 contemplate a situation where a party seeks to amend a pleading that is already in existence. Once
4 the Court dismissed the Commission’s Complaint (at least as it applied to Benning), this was no
5 longer the case. In light of the unusual circumstance this Court created when it dismissed the
6 Complaint but did not impose a filing deadline, Benning’s motion falls within the spirit of Local
7 Rule 7-11. Therefore, good cause appearing, the FTC shall file its amended complaint on or before
8 April 5, 2010.

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IT IS SO ORDERED.

Dated: 03/12/2010


RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE