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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARIO B. QUINONES and MARIO I. QUINONES,

Plaintiffs,

vs.

CHASE BANK USA, N.A.; and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 09cv2748-LAB (RBB)

**ORDER GRANTING
APPLICATION TO AMEND CASE
MANAGEMENT ORDER**

Chase seeks to amend the case management order in this case (Doc. No. 12) so that it can, in turn, amend its pleadings and add a counterclaim against Mario I. Quinones (“Junior”). Chase filed one counterclaim against Junior when it originally answered the complaint. (Doc. No. 4.) But information it obtained only recently in discovery, Chase alleges, gives rise to a second counterclaim.

The Quinoneses oppose Chases’s attempt to amend for what the Court discerns are three reasons. The first is procedural: Chase filed the application to amend *ex parte*, leaving the Quinoneses with very little time to respond considering the application “is accompanied by a lengthy memorandum and a lengthy declaration, which Chase’s counsel took at least 5 days to prepare.” The Quinoneses even accuse Chase of violating the Court’s own rules regarding *ex parte* motions and communications with the Court. These concerns are highly

1 exaggerated. First, the application couldn't possibly have taken 5 days to prepare. The
2 second counterclaim is basically a duplicate of the first, and it is accompanied by a 6-page
3 memo and 4-page declaration. The Court estimates it took no more than 3 or 4 hours for
4 Chase's counsel to put everything together. Second, the Court stands by its decision to
5 receive the application *ex parte*. Discovery is nearing its close and the application is as
6 straightforward as they come; there's no need to calendar it for some date in the distant
7 future and invite pages and pages of briefing. This case needs to keep moving.

8 The Quinoneses next argue that Chase's own lack of diligence is to blame for its
9 failure to add a second counterclaim earlier in the litigation. They cite cases like *Acri v. Int'l*
10 *Ass'n of Mach. & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986) for the
11 proposition that leave to amend should be denied when a party has known the critical facts
12 "since the inception of the cause of action." But the Quinoneses have no evidence that
13 Chase has been asleep at the wheel in this case. To the contrary, Chase tells a very
14 believable story: Junior didn't admit any responsibility for the 5520 account until his
15 September 21 deposition; in fact, the complaint in this case maintains "neither Mario B.
16 Quinones nor Mario I. Quinones opened [the 5520] account and neither has any
17 responsibility for that account." (Doc. No. 14 ¶ 10.) Chase was able to file its first
18 counterclaim, relating to the 6183 account, only because the complaint conceded that the
19 account was the "sole responsibility of Mario I. Quinones, the adult son of Mario B.
20 Quinones." (Doc. No. 14 ¶ 8.) Absent that kind of admission, Chase had little choice but to
21 wait until it could fully depose Mario I. Quinones to uncover his responsibility for the 5520
22 account. It is hard to see where the oversight or carelessness is in Chase's conduct, as the
23 Quinoneses allege.

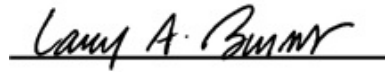
24 Finally, the Quinoneses suggest the case will be thrown into disarray if, at this juncture,
25 Chase is allowed to add a counterclaim. The Court doesn't see how. Discovery is open,
26 albeit for limited purposes, through November, and the second counterclaim is a duplicate
27 of the first. It can readily be woven into the ongoing litigation. To the extent additional
28 discovery needs to be taken and the parties cannot agree on the logistics, Judge Skomal

1 may revise the discovery schedule now in place. Any disruption to the case will almost
2 certainly be negligible. Chase's application to amend is **GRANTED**.

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IT IS SO ORDERED.

DATED: October 22, 2010



HONORABLE LARRY ALAN BURNS
United States District Judge