

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

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

O’M AND ASSOCIATES, LLC, an Illinois limited liability company, d/b/a O’Malley and Associates; PRESERVE CAPITAL, LLC, an Illinois limited liability company; and MBM SETTLEMENTS, LLC, an Illinois limited liability company,

Plaintiffs,

vs.

BRENDAN K. OZANNE, BRIAN C. DAWSON, AND DAWSON & OZANNE, a California general partnership, as escrow agent; MATTHEW STOEN, individually and as manager and agent for KODIAK FAMILY, LLC, a Nevada limited liability company; KODIAK FAMILY, LLC, individually and as agent for XYZ CORPORATION,

Defendants.

CASE NO. 10-CV-2130 H (RBB)

**(1) TENTATIVE ORDER  
REGARDING DEFENDANT  
MATTHEW STOEN’S MOTION  
TO DISMISS AND  
PLAINTIFF’S MOTION FOR  
LEAVE TO AMEND  
COMPLAINT**

**(2) ORDER DENYING AS  
MOOT EX PARTE MOTION  
FOR SHORTENED TIME**

On January 31, 2011, Defendant Matthew Stoen (“Stoen”) filed a motion to dismiss Counts I, III, IV, V, VI, VIII, and IX of Plaintiffs’ complaint. (Doc. No. 104.) A hearing on the motion to dismiss is set on March 14, 2011. On February 23, 2011, Plaintiffs filed a motion for leave to amend complaint in lieu of response to the motion to dismiss. (Doc. No. 23.) A hearing is set on the motion for leave to amend on March 28, 2011. On February 23,

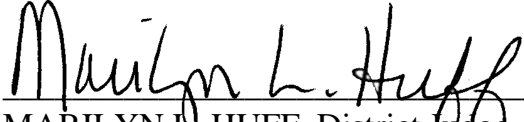
1 2011, Plaintiffs also filed an ex parte motion for shortened briefing on its motion for leave to  
2 amend complaint to have it heard with the motion to dismiss on March 14, 2011. (Doc. No.  
3 110.)

4 Federal Rule of Civil Procedure 15(a) allows a party leave to amend its pleading once  
5 as a matter of right prior to service of a responsive pleading. Thereafter, “a party may amend  
6 that party's pleading only by leave of the court or by written consent of the adverse party and  
7 leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). The decision  
8 whether to grant leave to amend “is entrusted to the sound discretion of the trial court.” Jordan  
9 v. County of Los Angeles, 669 F.2d 1311, 1324 (9th Cir.1982), vacated on other grounds, 459  
10 U.S. 810 (1982). Leave to amend is freely granted when justice requires. Moore v. R.G.  
11 Industries, Inc., 789 F.2d 1326, 1328 (9th Cir. 1986).

12 Exercising its discretion and in the interests of justice and judicial economy, the Court  
13 is inclined to grant the motion for leave to amend the complaint. Granting Plaintiff leave to  
14 amend would render moot Defendant Stoen’s motion to dismiss counts of the current  
15 complaint. If Defendants wish to oppose this tentative order, recognizing that leave to amend  
16 is freely granted, Defendants are directed to do so on or before **March 4, 2011**. In light of this  
17 schedule, the Court also denies as moot Plaintiff’s request for setting the motion for leave to  
18 amend for March 14, 2011.

19 **IT IS SO ORDERED.**

20 Dated: February 25, 2011

21   
22 MARILYN L. HUFF, District Judge  
23 UNITED STATES DISTRICT COURT  
24  
25  
26  
27  
28