

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LARRY KLAYMAN, *et. al*

Plaintiffs,

v.

BARACK HUSSEIN OBAMA II, *et. al*

Defendants.

Civil Action No. 13-CV-851

PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiffs, Larry Klayman, Charles Strange, and Mary Ann Strange, hereby move this honorable Court to file an Amended Complaint (Attached as Exhibit 1) through amendment and as grounds therefore would show:

Subsection (a)(2) of Rule 15 of the Federal Rules of Civil Procedure provides that leave to amend shall be freely given when justice requires. "Leave to amend a complaint should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility." See *Richardson v. United States*, 193 F.3d 545, 548-549 (D.C. Cir. 1999) citing *Foman v. Davis*, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962).

In addition, under Rule 15(b)(2), "[a] party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue." Fed.R.Civ.P. 15(b)(2). See also *Brown v R. & R Engineering Co.*, F Supp. 315 (D. Del.1958) reversed on other grounds 264 F.2d 219 (3d Cir.1959); *Hemmer–Miller Dev. Co. v. Hudson Ins. Co.*, 63 S.D. 109, 256 N.W. 798 (1934)."Trial of [an] issue without objection normally is enough to satisfy

the Rule 15(b) requirement." *Kirkland v. Dist. of Columbia*, 70 F.3d 629, 633, 315 U.S. App. D.C. 68 (D.C. Cir. 1995).

There was an implied and inherent cause of action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 et seq. within Plaintiffs' Amended Complaint by virtue of the nature of the allegations. The Plaintiffs wish to amend the complaint simply to clarify and make it explicit that there is a remedy under the APA.

The Plaintiffs contacted Defendants' counsel to seek consent for this motion. The Defendants' counsel have not indicated whether they consent to this motion as of the time of this filing, which is being made in anticipation of the hearing on November 18, 2013.

Dated: November 17, 2013

Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November 17, 2013 a true and correct copy of the foregoing Motion For Leave To Amend the Complaint (Civil Action No. 13-cv- 851) was submitted electronically to the District Court for the District of Columbia and served via CM/ECF upon the following:

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Respectfully submitted,
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