

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DR. GLENN W. CHERRY, ET AL.,

Plaintiffs,

v.

Case No. 8:09-cv-33-T-33EAJ

D.B. ZWIRN SPECIAL OPPORTUNITIES
FUND, L.P., ET AL.,

Defendants.

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ORDER

This matter comes before the Court pursuant to Plaintiffs' motion to withdraw motion for leave to file second amended complaint and motion for temporary restraining order and preliminary injunction (Doc. # 34), which was filed on April 10, 2009.

On April 7, 2009, Plaintiffs filed their motion for leave to file a second amended complaint (Doc. # 29) and verified emergency motion for a temporary restraining order and preliminary injunction (Doc. # 30). Thereafter, on April 9, 2009, Plaintiffs filed a motion for class certification (Doc. # 33).

By their present motion, Plaintiffs seek to withdraw their motion for leave to file a second amended complaint and motion for temporary restraining order and preliminary injunction. Plaintiffs submit that they seek to withdraw

their motions because Plaintiffs have filed a separate action against the FCC. Without commenting on the propriety of Plaintiffs' strategy for this case, this Court grants Plaintiffs' motion to withdraw the motion for leave to amend and motion for a temporary restraining order and preliminary injunction.

Furthermore, this Court denies Plaintiffs' motion for class certification without prejudice because the class certification motion was predicated upon the allegations of the proposed second amended complaint, which is withdrawn.


Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

- (1) Plaintiffs' motion to withdraw motion for leave to file second amended complaint and motion for temporary restraining order and preliminary injunction (Doc. # 34) is **GRANTED**.
- (2) Plaintiffs' motion for leave to file a second amended complaint (Doc. # 29) is **WITHDRAWN**.
- (3) Plaintiffs' verified emergency motion for a temporary restraining order and preliminary injunction (Doc. # 30) is **WITHDRAWN**.

(4) Plaintiffs' motion for class certification is **DENIED**
WITHOUT PREJUDICE.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this
13th day of April, 2009.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies: All Counsel of Record