

District Court for the District of Hawai`i ("Local Rules"). After careful consideration of the Motion, supporting and opposing memoranda, and the relevant legal authority, the Motion is HEREBY DENIED for the reasons set forth below.

BACKGROUND

Petitioners and Plaintiffs are bounty hunters and stars of the A&E Network television show "Dog the Bounty Hunter" ("the Program").

I. Chapman I

In approximately March 2005, Petitioners' company, Dog Corporation, contracted with Defendant Vertex Communications, LLC ("Vertex") to have Maureen Kedes Krutonog, formerly known as Maureen Kedes ("Kedes") and Vertex, provide public relations services for Petitioners and the Program. Although the contract expired in June 2005, Kedes and Vertex (collectively "Kedes/Vertex") continued to provide publicity services for Petitioners and the Program until Petitioners terminated their services in approximately May 2006.

On October 23, 2008, Petitioners filed the lawsuit known as Duane "Dog" Chapman, et al. v. Maureen Kedes Krutonog, et al., Civil No. 08-1-2181-10 VSM ("Chapman I"), in state court. The Complaint alleges claims for: breach of fiduciary duty; fraudulent concealment; and negligent or intentional misrepresentation. Petitioners seek general, special,

consequential, and incidental damages, attorney's fees and costs, prejudgment interest, and other appropriate relief.

On December 8, 2008, Kedes/Vertex removed Chapman I based on diversity jurisdiction.² The notice of removal contained an express reservation of all defenses, including, *inter alia*, lack of personal jurisdiction. On December 15, 2008, Kedes/Vertex filed a Motion to Dismiss Complaint Pursuant to FRCP 12(b)(2), which the district judge denied on September 22, 2009.

II. Chapman II

On October 23, 2008, Plaintiffs filed the instant action, known as Duane Lee Chapman II, et al. v. Krutonog, et al., Civil No. 08-1-2180-10 GJK ("Chapman II"), in state court. Plaintiffs allege that Defendants engaged in various improper acts while purportedly working as Plaintiffs' manager and "de facto talent agent". [Complaint at ¶ 5.] The primary allegation is that Defendants negotiated contractual provisions which were favorable to Defendants at Plaintiffs' expense. The Complaint alleges the following claims: breach of fiduciary duty; constructive fraud, fraudulent concealment; and misrepresentation. Plaintiffs seek: a declaration that Defendants are not entitled to further compensation under any unlawful agreements; general, special, consequential, and

² The federal court case number for Chapman I is CV 08-00552 HG-LEK.

incidental damages; attorneys' fees and costs; prejudgment interest; and any other appropriate relief. On December 18, 2008, Defendants removed the instant action based on diversity jurisdiction.

In the instant Motion, Petitioners argue that they are entitled to intervene in Chapman II as a matter of right because they have an interest in maintaining the privacy and confidentiality of financial and trade secret information.

In their memorandum in opposition, Defendants argue that the Motion is unnecessary because there is a Stipulated Protective Order in place which provides that a non-party may designate confidential information. Defendants question the need for any further protection and characterize Petitioners' claims of privacy as being exaggerated or involving documents that Petitioners already disclosed in other proceedings, thereby waiving any right to privacy.³

In their reply, Petitioners reiterate that: the Motion is timely; they have a right to privacy which mandates intervention; and they cannot adequately protect their privacy rights without intervention.

DISCUSSION

³ Defendants also urged the Court to hold the Motion in abeyance or to deny it pending the district judge's ruling on the motion to dismiss in Chapman I. This argument is now moot in light the denial of the motion to dismiss on September 22, 2009.

A motion to intervene "must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). Petitioners have complied with this requirement by attaching a proposed complaint to the Motion. However, this Court cannot conclude that Petitioners have fully stated, either in the Motion or in the proposed complaint, "the legal and factual grounds for intervention." Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d 470, 474 (9th Cir. 1992). Petitioners provide only a general reference to their right to privacy and to the existence of financial information and trade secrets.

Rule 24(a) provides:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a federal statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a). Petitioners do not argue that they have a statutory right to intervene. In order to intervene pursuant to Rule 24(a)(2), they must show that:

- (1) the intervention application is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability

to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest.

Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006) (citation and internal quotation marks omitted). The proposed intervenor has the burden of establishing each and every one of these elements, but courts interpret the elements broadly in favor of intervention. See id.

The instant action is in the early stages of litigation and thus the Motion was timely filed. Petitioners, however, fail to demonstrate that Plaintiffs may not adequately represent Petitioners' interest.

"The 'most important factor' to determine whether a proposed intervenor is adequately represented by a present party to the action is 'how the [intervenor's] interest compares with the interests of existing parties.'" Perry v. Proposition 8 Official Proponents, ___ F.3d ___, No. 09-16959, 2009 WL 3857201, at *2 (9th Cir. Nov. 19, 2009) (quoting Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003)) (alteration in original). This Court finds that Plaintiffs can adequately represent Petitioners' privacy and other interests in Chapman II. Petitioners and Plaintiffs are related to one another, are in business with one another, and (most importantly) are all represented by the same team of attorneys. Their collective objectives in their respective litigations are essentially identical in that they are

all united in their efforts against Krutonog and Kedes. "When an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises. If the applicant's interest is identical to that of one of the present parties, a compelling showing should be required to demonstrate inadequate representation." Prete, 438 F.3d at 956 (citation omitted). This Court concludes that Petitioners have failed to rebut the presumption that Plaintiffs adequately represent Petitioners' interest.

In addition, the stipulated protective order filed on May 28, 2009 in Chapman II provides that parties and non-parties may designate documents as confidential. Should there be a dispute, the parties are able to request court assistance. See, e.g., LR37.1(c). Plaintiffs' counsel, who also represent Petitioners, will be able to advise Petitioners of any discovery disputes in Chapman II that may affect Petitioners' interests, and Petitioners may seek leave to participate in the discovery motion, conference, or other proceedings if necessary to protect their interests.

As Petitioners are not able to demonstrate that their interests are inadequately represented in the instant action, this Court need not analyze the remaining elements for intervention. The Court therefore finds that Petitioners are not entitled to intervention as of right.

III. Permissive Intervention

Rule 24(b) states, in pertinent part:

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

- (A) is given a conditional right to intervene by a federal statute; or
- (B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24(b). Petitioners have not identified any statute that confers a conditional right to intervene in this case. Further, Petitioners have not alleged any independent claims. This Court therefore finds that permissive intervention is not warranted in this case.

CONCLUSION

On the basis of the foregoing, Petitioners' Motion to Intervene, filed on August 7, 2009, is HEREBY DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, December 9, 2009.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

DUANE LEE CHAPMAN, II, LELAND CHAPMAN AND TIM CHAPMAN V. BORIS KRUTONOG, ET AL; CIVIL NO 08-00579 HG-LEK; AMENDED ORDER DENYING PETITIONERS DUANE CHAPMAN AND BETH CHAPMAN'S MOTION TO INTERVENE