

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

MARK W. EVES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket no. 1:15-cv-300-GZS
	)	
PAUL R. LEPAGE,	)	
	)	
	)	
Defendant.	)	

**PROCEDURAL ORDER & REPORT OF CONFERENCE**

The Court held a telephonic conference of counsel to discuss Plaintiff's Motion for Leave to File Second Amended Complaint (ECF No. 33), a filing that Plaintiff made at 4:49 PM yesterday. Attorney David Webbert appeared for Plaintiff. Attorneys Patrick Strawbridge and Brian Weir appeared for Defendant.

The Court notes that Defendant's Motion to Dismiss (ECF No. 9), which was fully briefed as of February 24, 2016, was initially set for oral argument at the request of the parties on March 1, 2016 (with an oral argument date of April 1, 2016). See March 1, 2015 Order & Notice (ECF Nos. 22 & 23). At the parties' joint request, the Court then rescheduled oral argument on Defendant's Motion to Dismiss for April 13, 2016. See March 4, 2016 Order & Notice (ECF Nos. 27 & 28). On April 11, 2016, this Court issued a its Notice, which requested both counsel to come to the April 13<sup>th</sup> oral argument prepared to discuss the First Circuit's decision in Caesars Mass. Management Co. v. Crosby, 778 F.3d 327 (2015). See April 11, 2016 Notice (ECF No. 32). Plaintiff then filed the pending Motion for Leave to File Second Amended Complaint (ECF No. 33).

In fairness to Defendant, the Court held a conference of counsel to discuss whether he wished to move forward with today's scheduled oral argument or wished additional time to respond to Plaintiff's Motion for Leave to File Second Amended Complaint (ECF No. 33). At the conference, Defendant's counsel indicated that Defendant takes the position the proposed amendment of the complaint is futile but nonetheless would not oppose the amendment. Rather, Defendant's counsel indicated a desire to press forward with the oral argument today and have the court apply the arguments made in Defendant's Motion to Dismiss to the Second Amended Complaint.

Therefore, the Court hereby GRANTS WITHOUT OBJECTION Plaintiff's Motion for Leave to File Second Amended Complaint (ECF No. 33). Counsel for Plaintiff shall immediately file the attached Second Amended Complaint (ECF No. 33-1) on the docket and the Court will treat this as the operative pleading for purposes of the pending Motion to Dismiss.

The Court will set a deadline for answering the Second Amended Complaint after issuing a decision on the Motion to Dismiss, if appropriate.

SO ORDERED.

/s/ George Z. Singal  
United States District Judge

Dated this 13th day of April, 2016.