

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

IHOP IP, LLC et al.,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	Case No.: 11-0548-CV-W-FJG
INTERNATIONAL HOUSE OF PRAYER)	
et al.,)	
)	
)	
Defendants.)	

**MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT
AND SUGGESTIONS IN SUPPORT**

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiffs IHOP IP, LLC and International House of Pancakes, LLC (collectively "IHOP") move the Court for leave to file a Second Amended Complaint, which identifies the International House of Prayer East Bay defendant by its official name and seeks monetary damages against such defendant. A copy of the proposed Second Amended Complaint is attached hereto as Exhibit A. In support of this motion, IHOP provides the following suggestions:

1. The Scheduling and Trial Order, entered on October 25, 2011, establishes December 2, 2011 as the deadline to file any motion to amend the pleadings. (Doc. #20).
2. Through counsel for defendant International House of Prayer East Bay, IHOP has recently learned that the name "International House of Prayer East Bay" is a fictitious trade name and the official name of the entity is The Prayer Furnace, Inc. Upon information and belief, The Prayer Furnace, Inc. is the real party in interest and proper named defendant for all acts attributed to International House of Prayer East Bay in the First Amended Complaint and all claims

asserted against International House of Prayer East Bay in the First Amended Complaint. The Second Amended Complaint identifies the entity sued by its official name.

3. In addition, the Second Amended Complaint includes a request for monetary damages against The Prayer Furnace, Inc. This additional remedy is sought because IHOP has recently learned more information about the extent to which The Prayer Furnace, Inc. has used IHOP's trademarks to promote itself and sell or otherwise distribute services and products.

4. There is a "well-recognized distinction between a complaint that sues the wrong party, and a complaint that sues the right party by the wrong name." *Roberts v. Michaels*, 219 F.3d 775, 777-778 (8th Cir. 2000). Although a defendant corporation has the right to be accurately named in the pleadings, in a "true misnomer situation" where the plaintiff has named and served the right defendant by the wrong name, it is proper for the Court to grant a plaintiff leave to amend where "a mere misnomer [has] injured no one, and there is no reason why it should not [be] corrected by amendment." *Id.* at 778. "This misnomer principle is most obviously appropriate in cases where the plaintiff has sued a corporation but misnamed it." *Id.*; *see Locke v. ABB Power T & D*, No. 07-4042-CV-C-NKL, 2007 WL 2026390, at *1 (W.D. Mo. July 9, 2007) (granting plaintiff leave to amend complaint to correct legal name of defendant).

5. IHOP's motion is timely as it has been filed within the timeframe set by the Court to file such a motion. Discovery is ongoing, and the trial date is more than a year off. The request does not impact the remainder of the deadlines in the Scheduling Order or prejudice any party. The Prayer Furnace, Inc. had notice that the case was pending, given that it answered the First Amended Complaint. This motion is not made for vexation or delay, but is made in good faith for the purpose of obtaining a fair and impartial trial on IHOP's claims against the real party in interest.

6. For these reasons, IHOP respectfully requests that the Court grant its motion for leave to file its proposed Second Amended Complaint.

Respectfully submitted,

/s/Elizabeth A. Tassi

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LLC and IHOP IP, LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2011, a true and correct copy of the foregoing document was filed electronically via CM/ECF in the United States District Court for the Western District of Missouri, with notice of same being electronically served by the Court, addressed to:

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