

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 JACK FERM,)
4)
5 Plaintiff,) Case No.: 2:10-cv-02075-GMN-LRL
6 vs.)
7) **ORDER**
8 CROWN EQUITY HOLDINGS, INC.,)
9 et al.,)
10 Defendants.)

11 Plaintiff is a self-represented litigant who brought this action against his former employer
12 and related individuals, asserting claims ranging from wrongful termination and defamation per
13 se to unlawful manipulation of securities.

14 Pending before the Court are Plaintiff’s Motion for Partial Summary Judgment (ECF No.
15 10)¹; Motion to Amend Complaint (ECF No. 16); Motion to Appoint Receiver (ECF No. 17);
16 Motion to Disqualify Defendants’ Counsel (ECF No. 18); Motion for a Hearing (ECF No. 32);
17 and Motion for Partial Summary Judgment (ECF No. 43). Also pending are Defendants’
18 Motion to Dismiss (ECF No. 7) and Rule 56(d) Motion (ECF No. 22).

19 **I. PLAINTIFF’S MOTION TO AMEND COMPLAINT (ECF NO. 16)**

20 Plaintiff requests leave to amend his First Amended Complaint (ECF No. 4) in order to
21 plead additional facts and add Negligent Infliction of Emotional Distress, Intentional Infliction
22 of Emotional Distress, and “Invasion of Privacy False Light” claims. Defendants failed to
23 respond to the Motion.

24 In light of Federal Rule of Civil Procedure 15(a)(2)’s instruction that a “court should

25 ¹ Although the docket entry at ECF No. 8 indicates that Plaintiff’s Motion for Partial Summary Judgment is located there, the Motion was actually filed at ECF No. 10.

1 freely give leave [to amend] when justice so requires” and the Supreme Court’s statement that
2 “this mandate should be heeded” in the absence of any “apparent or declared”⁴ reason
3 counseling against amendment, *Foman v. Davis*, 371 U.S. 178, 182 (1962), Plaintiff will be
4 given leave to file the Second Amended Complaint attached to his Motion (ECF No. 16). This
5 amendment will ensure judicial efficiency, as it will allow Plaintiff to assert in one proceeding
6 all of his claims arising out of Defendants’ alleged wrongdoing. Defendants have not
7 “declared” a reason that counsels against such amendment.

8 **II. DEFENDANTS’ MOTION TO DISMISS (ECF NO. 7)**

9 Defendant moves to dismiss Plaintiff’s First Amended Complaint pursuant to Federal
10 Rules of 12(b)(1) and 12(b)(6), contending that diversity of citizenship is lacking and Plaintiff
11 fails to state a claim upon which relief can be granted.

12 **A. Subject Matter Jurisdiction**

13 Defendants claim that the Court lacks subject matter jurisdiction over this lawsuit
14 because Plaintiff failed to join an indispensable party--River Ridge Holdings (“RRH”)--and that
15 joinder of RRH as a plaintiff would destroy diversity jurisdiction because RRH is allegedly a
16 citizen of Nevada.² However, Defendants fail to recognize that the Court’s jurisdiction over this
17 case is not just premised on diversity jurisdiction; the Court also has federal question jurisdiction.

18 Plaintiff’s Third Cause of Action alleges claims arising under the Securities Exchange
19 Act of 1934 and the Securities Act of 1933, both of which are federal statutes. Because “[a]ny
20 non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction, even
21 if that claim is later dismissed on the merits under Rule 12(b)(6),” *Bollard v. California*
22 *Province of the Society of Jesus*, 196 F.3d 940, 951 (9th Cir. 1999), the Court has federal

23
24 ² Defendants have not shown that RRH is actually a citizen of Nevada. According to the document from the Nevada
25 Secretary of State attached to Defendants’ Motion to Dismiss, RRH is a limited partnership. (See Ex. 1, ECF No. 7.) For the
purposes of diversity of citizenship analysis, a partnership “is a citizen of each State or foreign country of which any of its
partners is a citizen.” *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004). Yet, Defendants have failed to
list each of RRH’s partners, much less their states of citizenship.

1 question jurisdiction over this lawsuit. Therefore, even if joinder of RRH were necessary and
2 even if RRH were a citizen of Nevada, the Court would still have subject matter jurisdiction
3 over the lawsuit. Thus, dismissal is not appropriate under Rule 12(b)(1) for lack of subject
4 matter jurisdiction, nor under Rule 12(b)(7) for failure to join a necessary party, see
5 *Cunningham v. Municipality of Metropolitan Seattle*, 751 F. Supp. 885, 896-97 (W.D. Wash.
6 1990) (denying request for dismissal due to failure to join an indispensable party where joinder
7 of the indispensable party would not destroy subject matter jurisdiction).

8 **B. RRH as an Indispensible Party**

9 A motion to dismiss for failure to join an indispensable party can, however, be converted
10 to a motion to compel joinder of that party where the party's joinder would not affect the
11 Court's jurisdiction. See, e.g., *id.* It is Defendants' burden to show that RRH is an indispensable
12 party, as "[a] party making a Rule 12(b)(7) motion to dismiss for failure to join a party under
13 Rule 19 bears the burden of demonstrating that dismissal or joinder is appropriate." *Asarco LLC*
14 *v. Shore Terminals LLC*, No C 11-01384 WHA, 2011 WL 2669474, at *2 (N.D. Cal. July 7,
15 2011). Defendants have failed to carry that burden here.

16 Defendants first contend that Plaintiff cannot bring any claims related to his employment
17 with Defendant Crown Equity Holdings because RRH, rather than Plaintiff, entered into the
18 consulting agreement with Defendant Crown Equity Holdings that governed Plaintiff's
19 employment at Defendant Crown Equity Holdings. In support of this argument, Defendants
20 attach a document that they allege is a "Consulting Agreement by and between River Ridge
21 Holdings, LTD, a Nevada entity ("River Ridge"), and Defendant Crown." (See Ex. 1, ECF No.
22 7.) However, nowhere in that document is RRH or Plaintiff's name mentioned. (See Ex. A, ECF
23 No. 7.) Instead, it appears to be an agreement between someone named Linda Reiger and
24 Defendant Crown Equity Holdings. This is not sufficient to demonstrate that RRH is an
25 indispensable party with regard to Plaintiff's employment claims.

1 Defendants also argue that Plaintiff cannot bring his various actions concerning the
2 manipulation of Crown Equity Holdings common stock because RRH, not Plaintiff, was a party
3 to the subscription agreements that provided for the purchase of that stock. However, Plaintiff
4 rebuts this argument by attaching to his Response a document dated prior to the initiation of this
5 lawsuit wherein RRH purports to assign “all rights, title and interest” in those stocks to Plaintiff.
6 (Ex. 2, Resp., ECF No. 15.) Defendants filed no Reply to Plaintiff’s Response and, therefore,
7 effectively conceded the point with regard to this Motion. See *Hardy v. Indymac Federal Bank*,
8 263 F.R.D. 586, 590 (E.D. Cal. 2009). Thus, Defendants have failed to meet their burden of
9 demonstrating that RRH is an indispensable party.

10 **C. Failure to State a Claim**

11 Because the Court has granted Plaintiff’s Motion to Amend (ECF No. 16), Defendants’
12 Motion to Dismiss Plaintiff’s First Amended Complaint for failure to state a claim is now moot
13 and, consequently, will be denied without prejudice. Defendants may file a new Motion to
14 Dismiss addressing the allegations and claims set forth in the Second Amended Complaint, if
15 they so choose.

16 **III. PLAINTIFF’S MOTIONS FOR PARTIAL SUMMARY JUDGMENT** 17 **(ECF NOS. 10 & 43)**

18 Plaintiff filed his first Motion for Partial Summary Judgment (ECF No. 10) less than two
19 months after he filed his Complaint and initiated this suit. His second Motion for Partial
20 Summary Judgment (ECF No. 43) was filed two months later. At that time, no formal discovery
21 had been conducted, no scheduling order setting the timetable for discovery had been entered,
22 nor had Defendants’ Answer been filed.

23 Consequently, Defendants moved pursuant to Federal Rule of Civil Procedure 56(d) for
24 the Court to either deny or stay consideration of Plaintiffs’ Motions for Partial Summary
25 Judgment. (See Rule 56(d) Motion, ECF No. 22.) Defendants cite to their need to conduct

1 discovery in order to properly respond to Plaintiff's motions, particularly their need to ascertain
2 whether various incendiary or fraudulent statements alleged by Plaintiff to be attributable to
3 various Defendants were: (a) in fact made, and (b) in fact attributable to those particular
4 Defendants. The Court agrees that discovery would be appropriate and helpful to both sides in
5 formulating their respective Motions for Summary Judgment and Responses; therefore,
6 Plaintiff's Motions for Partial Summary Judgment (ECF Nos. 10 & 43) will be denied without
7 prejudice. Should Plaintiff wish to file similar motions at the close of discovery, he may do so
8 then. As was noted in a case before the Western District of Texas:

9 Though Rule 56 allows a party to move for summary judgment 'at
10 any time,' the granting of summary judgment is limited until after
11 adequate time for discovery. A grant of summary judgment is
12 premature and improper when basic discovery has not been
 completed, particularly when the moving party has exclusive access
 to the evidence necessary to support the nonmoving party's claims.

13 Phongsavane v. Potter, No. CIVASA05CA0219-XR, 2005 WL 1514091, at *5 (W.D. Tex. June
14 24, 2005) (internal citation omitted). Plaintiff's Motions were premature here. Defendants'
15 Rule 56(d) Motion (ECF No. 22) will therefore be granted to the extent it requests the denial of
16 Plaintiff's Motions for Partial Summary Judgment.

17 **IV. MOTION TO APPOINT RECEIVER (ECF NO. 17)**

18 Plaintiff has also filed a Motion to Appoint Receiver (ECF No. 17), in which he asks to
19 have a "custodian or receiver appointed to take over the affairs of Crown Equity Holdings."
20 (Mot. to Appt. Receiver 1, ECF No. 17.) This Motion will be denied.

21 Federal law governs the appointment of a receiver in a federal action, regardless of
22 whether the court is exercising diversity or federal question jurisdiction. Canada Life Assurance
23 Co. v. LaPeter, 563 F.3d 837, 842 (9th Cir. 2009). "Under federal law, appointing a receiver is
24 an extraordinary equitable remedy, which should be applied with caution." Id. at 844 (internal
25 quotation marks omitted). A receiver should be appointed "only in cases of clear necessity to

1 protect plaintiff's interests in the property." 12 Charles Alan Wright, Arthur R. Miller, Mary
2 Kay Kane, & Richard L. Marcus, Federal Practice and Procedure § 2983 (2d ed. 2011).

3 There is no precise test for determining whether to appoint a receiver; rather, federal
4 courts consider a variety of factors, such as:

- 5 (1) whether [the party] seeking the appointment has a valid claim;
- 6 (2) whether there is fraudulent conduct or the probability of
7 fraudulent conduct, by the defendant; (3) whether the property is in
8 imminent danger of being lost, concealed, injured, diminished in
9 value, or squandered; (4) whether legal remedies are inadequate; (5)
10 whether the harm to plaintiff by denial of the appointment would
11 outweigh injury to the party opposing appointment; (6) the plaintiff's
probable success in the action and the possibility of irreparable
injury to plaintiff's interest in the property; and, (7) whether [the]
plaintiff's interests sought to be protected will in fact be well-served
by receivership.

12 Canada Life, 563 F.3d at 844.

13 Plaintiff's Second Amended Complaint--like his previous two complaints--only seeks
14 legal remedies. (Ex. 1 p. 92, Mot. to Amend, ECF No. 16.) That is, it only seeks money
15 damages. "As such, Plaintiff's alleged injury is compensable in damages and appointment of a
16 receiver is not appropriate." Concorde Equity II, LLC v. Miller, No. 10-1041 SC, 2010 WL
17 2354189, at *2 (N.D. Cal. June 9, 2010).

18 Despite seeking only money damages in his complaints, Plaintiff contends that the Court
19 should order the "extraordinary" equitable remedy of appointing a receiver prior to an
20 adjudication of the case on the merits because he believes that Crown Equity Holdings will
21 become insolvent or otherwise collapse prior to him collecting any money judgment against it.
22 (Mot. to Appt. Receiver 6-10, ECF No. 17.) Plaintiff puts forth a number of different arguments
23 in support of this contention. His first argument appears to be that the company is going to
24 become insolvent because its board of directors lacks "business acumen" and is controlled by
25 Defendant Mike Zaman, the company's majority shareholder. (See Mot. to Appt. Receiver 4-6,

1 ECF No. 17.) However, even if one were to take Plaintiff's assessment of Crown Equity
2 Holdings' management as true, a lack of business acumen among board members and a
3 tendency to agree with the majority shareholder fall far short of clearly indicating that Crown
4 Equity Holdings' insolvency is imminent.

5 In the Declaration attached to his Motion, Plaintiff also explains:

6 I have observed that since Mike Zaman began to trash my name on
7 the CRWE Message Board that Crown has declined to generate new
8 business. Therefore there is a strong possibility that Crown is either
insolvent or is becoming insolvent.

9 (Decl. ¶ 30, Ex. 1, ECF No. 17.) However, the opposite inference can also be drawn from the
10 facts cited by Plaintiff: Crown Equity Holdings could have "declined" to generate new business
11 because it already had more than enough and was thriving. Plaintiff's next paragraph does,
12 however, cut against that inference, stating:

13 I have observed additionally that Mike Zaman has decreased his
14 price to Promote companies from \$25,000 to \$5,000. This could
15 mean that Crown may be running out of money, since they have No
new business. This was placed on the Crown message board.

16 (Decl. ¶ 31, Ex. 1, ECF No. 17.) But still, the fact that Crown Equity Holdings or Mr. Zaman is
17 lowering the price of its services does not necessarily mean that it is in imminent danger of
18 collapse. Even Plaintiff concedes that this merely "could" mean that Crown Equity Holdings
19 "may" be running out of money. That is far from the sort of clear showing necessary to justify
20 the extraordinary equitable relief Plaintiff requests.

21 Plaintiff also appears to want a receiver appointed because he believes that Defendant
22 Mike Zaman is manipulating the price of Crown Equity Holdings' Stock. Plaintiff declares:

23 Zaman admitted to me on November 23, 2010 that he was holding
24 the price of Crown Equity Shares up and had invested \$60,000 of his
25 own money to do so, and (ii) a sampling of Crown Equity Holdings
trading prices and volume supports his admission to me that the
price has been manipulated[.]

1 (Decl. ¶ 18, Ex. 1, ECF No. 17.) However, to the extent that Mr. Zaman is somehow
2 manipulating the stock price and Plaintiff is harmed by it, Plaintiff may simply seek money
3 damages and need not resort to the drastic measure of having a receiver appointed. See Leighton
4 v. One William St. Fund, Inc., 343 F.2d 565, 568 (2d Cir. 1965) (affirming trial court's denial of
5 a motion for appointment of receiver where Plaintiff's motion "was premised on claimed
6 conflicts of interest concerning Lehman Brothers' relationship with the Fund and, additionally,
7 on alleged waste of the Fund's assets by the defendant directors" because "any waste would be
8 compensable in damages").

9 In sum, Plaintiff has failed to show that there is a clear necessity justifying the
10 appointment of a receiver. Indeed, Plaintiff's Motion fails to justify the requested relief under
11 all but one of the Canada Life factors. It fails under the fourth and seventh Canada Life factors
12 (inadequacy of legal remedies & whether a receivership would be effective) because the
13 remedies Plaintiff seeks in his Second Amended Complaint are strictly legal remedies and he
14 has failed to show that his interest in receiving such remedies would in fact be well-served by a
15 receivership. Further, he has failed to demonstrate that the third factor (whether the property is
16 in imminent danger of being lost) tips in his favor because he has not shown that there is truly an
17 imminent danger that Crown Equity Holdings will become insolvent and thereby deprive him of
18 his ability to collect on his damages claims. The first and sixth factors (validity of claim &
19 likelihood of success) also do not weigh in plaintiff's favor, as this nascent case has not yet
20 developed to the point where it is clear that Plaintiff has a valid claim or that he is likely to
21 succeed on the merits. Plaintiff does not even address the fifth factor (balance of the hardships),
22 but it does not seem that the balance tips in his favor where, as here, he has not yet prevailed on
23 the merits of his claims and a receivership would usurp the powers of the board members and
24 impose new administrative costs on the corporation.

25 The final factor--fraudulent conduct by the defendant--may tip in Plaintiff's favor, as he

1 has set forth specific instances of allegedly fraudulent activity on the part of Defendant Mike
2 Zaman, but this factor is hardly enough to outweigh the other six. Accordingly, Plaintiff's
3 request for the extraordinary remedy of imposing a receivership on Crown Equity Holdings will
4 be denied. Because Plaintiff's briefs are not sufficiently meritorious to warrant a hearing, his
5 Motion for a Hearing (ECF No. 32) on this Motion will also be denied.

6 **V. PLAINTIFF'S MOTION FOR DISQUALIFICATION OF COUNSEL (ECF NO. 18)**

7 In this Motion, Plaintiff seeks to disqualify Defendants' counsel from representing
8 Defendant Crown Equity Holdings based on Plaintiff's speculation that Defendant Crown
9 Equity Holdings "has a claim against [Defendant] Mike Zaman based on Fraud, his market
10 manipulation of Crown securities which has all but destroyed the stock." (Mot. to Disqualify 16,
11 ECF No. 18.) However, the Court is unwilling to take such a drastic step as disqualifying
12 counsel where such a conflict has not yet arisen and Plaintiff is merely speculating as to its
13 existence. This motion will be denied.

14 **CONCLUSION**

15 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Amend Complaint (ECF No. 16)
16 is **GRANTED**.

17 **IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss (ECF No. 7) is
18 **DENIED without prejudice**.

19 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Partial Summary Judgment
20 (ECF No. 10) is **DENIED without prejudice**.

21 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Partial Summary Judgment
22 (ECF No. 43) is **DENIED without prejudice**.

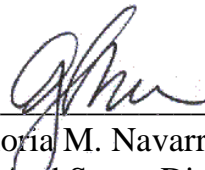
23 **IT IS FURTHER ORDERED** that Defendants' Rule 56(d) Motion (ECF No. 22) is
24 **GRANTED** to the extent it requests the denial of Plaintiff's Motions for Partial Summary
25 Judgment.

1 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Appoint Receiver (**ECF No.**
2 **17**) is **DENIED**.

3 **IT IS FURTHER ORDERED** that Plaintiff's Motion for a Hearing (**ECF No. 32**) is
4 **DENIED**.

5 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Disqualification of Counsel
6 (**ECF No. 18**) is **DENIED**.

7 DATED this 1st day of August, 2011.

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12 Gloria M. Navarro
13 United States District Judge
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