

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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THE CHOICE IS YOURS, INC. et al.,	:	
	:	
Plaintiff,	:	
v.	:	No. 2:14-cv-01804
	:	
THE CHOICE IS YOURS et al.,	:	
	:	
Defendants.	:	

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**ORDER**

AND NOW, this 21<sup>st</sup> day of September, 2015, upon consideration of the Motion of Defendants The Choice Is Yours, District Attorney Seth Williams, and the Philadelphia District Attorney's Office to Dismiss Plaintiffs' Amended Complaint, ECF No. 96, the Motion of Defendants the City of Philadelphia, City Solicitor Shelley Smith, and the Philadelphia Law Department to Dismiss Plaintiffs' Amended Complaint, ECF No. 97, and Plaintiffs' Motion for Leave to File a Second Amended Complaint, ECF No. 154, **IT IS ORDERED** as follows:

1. The Motion of Defendants The Choice is Yours, District Attorney Seth Williams, and the Philadelphia District Attorney's Office, ECF No. 96, is **GRANTED**. The following claims are **DISMISSED WITH PREJUDICE**:

(a) All claims against Defendant The Choice Is Yours and Defendant Philadelphia District Attorney's Office;<sup>1</sup>

(b) Count I of Plaintiffs' Amended Complaint;

(c) Counts II, III, and VIII of Plaintiffs' Amended Complaint, to the extent asserted against District Attorney Williams;

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<sup>1</sup> The Clerk of Court is directed to terminate both of these Defendants from this action.

(d) Plaintiffs' claims for punitive damages against District Attorney Williams in his official capacity;

(e) Count IV Plaintiffs' Amended Complaint, to the extent asserted against District Attorney Williams in his official capacity; and

(f) Count IX Plaintiffs' Amended Complaint, to the extent asserted against District Attorney Williams.

2. The Motion of Defendants City of Philadelphia, City Solicitor Shelley Smith, and the Philadelphia Law Department is **GRANTED**. The following claims are **DISMISSED WITH PREJUDICE**:

(a) Counts II, III, and VIII Plaintiffs' Amended Complaint, to the extent asserted against the City of Philadelphia;

(b) Plaintiffs' claims for punitive damages against the City of Philadelphia;

(c) Count IV Plaintiffs' Amended Complaint, to the extent asserted against the City of Philadelphia; and

(d) Count IX of Plaintiffs' Amended Complaint, to the extent asserted against the City of Philadelphia.

3. Plaintiffs' Motion for Leave to File a Second Amended Complaint, ECF No. 154, is **DENIED**.<sup>2</sup>

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<sup>2</sup> Plaintiffs did not attach a copy of their proposed amended complaint to their Motion. Failing to attach a draft of a proposed amended complaint is "fatal to a request for leave to amend." U.S. ex rel. Zizic v. Q2Administrators, LLC, 728 F.3d 228, 243 (3d Cir. 2013). Plaintiffs' belated submission of the proposed amended complaint, which Plaintiffs filed with the Court sixty-eight days after they filed their Motion, cannot cure this deficiency, given that Defendants were not afforded an opportunity to address the contents of the proposed amended complaint in their responses to Plaintiffs' Motion. Plaintiffs' Motion also failed to describe the nature of the proposed amendments with sufficient specificity to permit the Court, and Defendants, to analyze the propriety of affording leave to amend. See Franks v. Food Ingredients Int'l, Inc., No. 09-3649, 2010 WL 3046416, at \*7 (E.D. Pa. July 30, 2010) ("[T]he moving party in a Rule 15(a) situation must apprise the Court and the opposing part of the precise nature of the proposed amendment, and because plaintiff has failed to do this, his motion [for leave to amend] must fail." (quoting Lellock v. Pain, Webber, Jackson & Curtis, Inc., No. 81-2104, 1983 WL 1351, at \*7

4. Defendants' District Attorney Seth Williams and the City of Philadelphia's Motion for Leave to File a Second Sur-Reply in further Opposition to Plaintiffs' Motion for Leave to File Second Amended Complaint, ECF No. 172, is **DENIED** as moot.

5. Plaintiff shall have **fourteen days from the date of this Order** to file a second Amended Complaint consistent with this Order and accompanying Memorandum Opinion.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.  
JOSEPH F. LEESON, JR.  
United States District Judge

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(W.D. Pa. June 29, 1983))). However, in light of the Court's disposition of the present motions to dismiss Plaintiffs' Amended Complaint, Plaintiffs may file a second Amended Complaint in accordance with this Order.