

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

JOSÉ CARLOS VÉLEZ-COLÓN

Plaintiffs,

v.

T-MOBILE USA; T-MOBILE PUERTO
RICO LLC; Perpetrator T

Defendants.

CIVIL NO. 09-1623 (ADC)

MOTION FOR TRANSFER AND FOR SANCTIONS

TO THE HONORABLE COURT:

COMES NOW, Defendant T-Mobile Puerto Rico, LLC (“Defendant”), through the undersigned counsel, and very respectfully states and prays:

On February 24, 2009 Plaintiff José Vélez Colón filed a pro se Complaint against T-Mobile USA, Inc. and T-Mobile Puerto Rico, LLC for alleged violations of Fair Credit Reporting Act. The case was assigned to Honorable Judge Salvador E. Casellas under the following case number: 3:09-cv-01179-SEC. See Docket 2 in Velez-Colon v. T-Mobile USA, Inc. et al, Civil No. 3:09-cv-01179-SEC. Along with the Complaint, Plaintiff filed a Motion for Leave to Proceed *In Forma Pauperis* (Docket 1) and a Motion for Request for Service and to Appoint Counsel (Docket 3).

On April 17, 2009, the Honorable Court denied Plaintiff’s request to proceed *in forma pauperis* (Docket 5), declared moot Plaintiff’s supplemental motion regarding the same (Docket 6) and denied Plaintiff’s request to appoint Counsel (Docket 7).¹ On April 24, 2009, Plaintiff filed a

¹ Although the Court does not elaborate its determination, in another case before Hon. Judge Casellas where Plaintiff José Vélez Colón also moved to proceed in forma pauperis, Vélez Colón v Caribbean Produce Exchange, Inc., Civil No. 08-1607 (SEC), the Court denied Plaintiff’s same request to litigate in forma pauperis finding that: “Plaintiff indicates that he is currently unemployed but that his take home pay in his previous job was around \$ 42,000.00 per year. See, Docket #1 p. 1. In considering whether to grant or deny a motion to proceed in forma pauperis, the Court may take into

Motion for Reconsideration (Docket 8) that was never resolved by the Court, because on July 6, 2009, Plaintiff filed a notice of voluntary dismissal. (Docket 9).

On the same day that Plaintiff filed his notice of voluntary dismissal of the case before Hon. Salvador Casellas, Plaintiff re-filed *exactly the same factual claim, against exactly the same parties* before this Honorable Court. This time, the case was assigned to Honorable Judge Aida M. Delgado-Colón under case number: 3:09-cv-01623-ADC. See Docket 1, Velez-Colon v. T-Mobile USA, Inc. et al, Civil No. 3:09-cv-01623-ADC.

Except for an increased demand for damages, the Complaint in this case is virtually the same Complaint filed by Plaintiff in Velez-Colon v. T-Mobile USA, Inc. et al, Civil No. 3:09-cv-01179-SEC. Plaintiff's voluntary dismissal and re-filing on the same day of virtually the same Complaint is a blatant attempt to judge shop after an adverse determination by Hon. Judge Casellas in the first case.

Other plaintiffs have attempted to manipulate the Court's random assignment process by voluntarily dismissing their first suit and re-filing again the same day. Needless to say, the courts do not favor the practice. Although, pursuant to F.R.Civ.P. 41(a)(1)(i), a party is entitled to voluntarily dismiss a case without prejudice and re-file in a future occasion, a party may not abuse the Court's processes by using Rule 41 as a loophole to circumvent the original assignment of the case to a particular judge.

“The semblance of judge-shopping ... is [] a concern when a litigant discontinues a fray, only to start over again on another day.” Nat'l Treasury Emp. Union v. IRS, 765 F.2d 1174, 1175 n. 5 (D.C.Cir.1985). It “doubtless disrupts the proper functioning of the judicial system and may be disciplined.” Standing Comm. on Discipline of the U.S. Dist. Ct. for the Cent. Dist. of Cal. v. Yagman,

account, not only a plaintiff's income at the moment she filed the action, but also his earning capacity. See, Roberts v. I-T-E Circuit Breaker Co., 316 F. Supp. 133, 134 (D. Minn. 1970) (stating that “in passing on the question of poverty to determine forma pauperis entitlement, the court should consider an applicant's earning capacity and ability, even though at the moment applicant may not be employed and thus may have no current earnings.”) Plaintiff's previous salary of \$42,000, as stated at Docket # 1, reflects that he is capable of generating sufficient earnings to satisfy the costs of litigation. For the reasons herein stated, Plaintiff's motion will be DENIED.” Docket 3 in Vélez Colón v Caribbean Produce Exchange, Inc., Civil No. 08-1607 (SEC).

55 F.3d 1430, 1443 (9th Cir.1995). These “attempts to manipulate the random case assignment process are subject to universal condemnation.” United States v. Phillips, 59 F.Supp.2d 1178, 1180 (D.Utah 1999) (citing United States v. Conforte, 457 F.Supp. 641, 652 (D.Nev.1978), aff'd, 624 F.2d 869 (9th Cir.1980)).

Vaqueria Tres Monjitas, Inc. v. Rivera, 341 F.Supp.2d 69, 71 (DPR 2004).

The Ninth Circuit in Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998), discussed the practice of judge-shopping as well as the District Court’s prerogative to sanction said practice and stated that: “[t]he district court’s inherent power to impose dismissal or other appropriate sanctions therefore must include the authority to dismiss a case for judge-shopping.” Id, cited in Vaqueria Tres Monjitas, Inc. v. Rivera, 341 F.Supp.2d 69, 71 (DPR 2004). According to this Honorable Court,

a court faced with judge-shopping has the authority to act to preserve the integrity and control of its docket. Moreover, it is particularly important for a district utilizing a random selection process to jealously guard the integrity of the system from potential abuse which attempts to circumvent the process. By engaging in judge-shopping, parties contravene the very purpose of random assignment, which is to prevent judge-shopping by any party, thereby enhancing public confidence in the assignment process.

Vaqueria Tres Monjitas, Inc. v. Rivera, 341 F.Supp.2d 69, 72-73 (DPR 2004). Policy considerations and judicial economy also weigh heavily against condoning a party's judge-shopping practices. The **“district’s docket would become clogged and suffer virtual incapacitation if all litigants were allowed to bring a new cause of action every time a motion to amend was denied or partial summary judgment was granted.** Furthermore, to allow the approach plaintiffs advocate would grant this court's seal of approval to a practice of flagrant judge-shopping. While the court is aware that a certain amount of judge-shopping occurs each time a litigant decides whether to file a case in Wichita, Topeka, or Kansas City, **the court cannot condone plaintiffs’ practice of running to a different city within the district and filing a new case every time a judge in a prior action makes a ruling adverse to that litigant's position.**” (Emphasis in

original.) Vaqueria Tres Monjitas, Inc. v. Rivera, 341 F.Supp.2d 69, 73 (DPR 2004), citing Oxbow Energy, Inc. v. Koch Industries, Inc., 686 F.Supp. 278, 282 (D.Kan.1988).

In the case at bar, the timing of Plaintiff's actions of filing a voluntary dismissal and re-filing virtually the same complaint against the same parties, lead to the inevitable conclusion that José Vélez-Colón has engaged in judge-shopping. Faced with a denial of his request to litigate the case *in forma pauperis*, Plaintiff tactically dismissed the first action and re-filed his Complaint in hopes that the random assigning process would result in a different and possibly more favorable judge.

As a result, T-Mobile Puerto Rico, LLC requests that the case be transferred back to Judge Salvador E. Casellas, pursuant to Local Rule 3.2(b) which authorizes the transfer of cases "[i]n the interest of justice ... or to further the efficient performance of the business of the Court." "Such transfer will prevent [Plaintiff] from reaping benefits from [his] ill-conceived tactics." Vaqueria Tres Monjitas, 341 F.Supp.2d at 77.

Furthermore, T-Mobile Puerto Rico, LLC respectfully requests that this Honorable Court impose the sanctions, economic or otherwise, it deems just and proper under the inherent power of the Court to penalize Plaintiff's blatant attempt at judge-shopping. See, Vaqueria Tres Monjitas v. Rivera, 230 F.R.D. 278, 281 (DPR 2005) ("Faced with the appearing attorneys' blatant and otherwise unexplainable course of action, the Court, in its unwavering duty to be vigilant of abuses and misuses of its resources, decided that it had to deter said conduct by sanctioning the appearing attorneys and any other practitioner that ventures down the same path"). In the instant case, although Plaintiff appears pro se before this Honorable Court, he has a *juris doctor* from the University of Puerto Rico School of Law and is knowledgeable of federal substantive and procedural law.² Plaintiff should be sanctioned for his blatant and knowing attempt to judge-shop.

² According to his profile in Facebook, plaintiff holds a juris doctor from the University of Puerto Rico School of Law, is currently employed by Hidrocultivo JC, Corp., and worked in the Puerto Rico Court of Appeals in the summer of 2008. See, Exhibit 1.

WHEREFORE, Defendant T-Mobile Puerto Rico, LLC hereby respectfully requests that this Honorable Court Transfer the case to Honorable Judge Salvador E. Casellas pursuant to Local Rule 3.2(b) and impose the sanctions against Plaintiff it deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of July, 2009.

/s/Jaime E. Toro-Monserrate

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Attorneys for
T-Mobile Puerto Rico, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

In San Juan, Puerto Rico, this 28th day of July, 2009.

/s/Joanne A. Tomasini-Muñiz

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Jose Carlos Velez-Colon

Info Notes

Basic Information

Networks: San Juan, PR
 Birthday: November 20, 1982
 Hometown: Hatillo, United States
 Interested In: Women
 Looking For: Friendship
 Political Views: Partido Nuevo Progresista (PNP)
 Religious Views: Christian

Education and Work

Grad School: University of Puerto Rico, Rio Piedras
 Juris Doctor, Law
 College: UPR Mayaguez
 High School: Luis Melendez Rodriguez

Employer: Hidrocultivos JC, Corp.
 Time Period: January 2001 - Present

Description: Family-owned Agricultural Corporation

Employer: Puerto Rico Court of Appeals

Position: Law Clerk
 Time Period: June 2008 - July 2008
 Location: San Juan, Puerto Rico
 Description: Assists in drafting opinions, read appellate briefs, and legal
 Review lower court records, provide advice to the Judge of
 areas, recommended outcomes of individual issues and disp
 appeals. Perform other duties as required by the Judge to e
 efficient administration of the office.

Pages



Silvio Rodríguez
Musician



Sofrito Puertorriqueño
Food and Beverage



michael jordan
Other Public Figure

Applications

