IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

ONG INVESTMENTS, LC, Plaintiff, vs. JOSEPH B. FURLONG dba MDSOX; RADWORKERS, INC.; JOHN DOES 1–5 DBA MDSOX, Defendants.	MEMORANDUM DECISION AND ORDER Case No. 2:15-cv-00368-TC

On November 16, 2015, Plaintiff ONG Investments, LC, (ONG) filed a motion seeking leave to amend its complaint and add Cirk Tek, LLC, as a defendant. (ECF No. 16.) Until then, ONG had not yet moved to amend its original complaint, which was served on Defendants Joseph P. Furlong and Radworkers, Inc. on September 10, 2015. ONG's motion was filed in the middle of briefing a motion to dismiss (ECF No. 7), which was filed on September 30, 2015.

Even though twenty-one days have passed since the serving of the complaint and the filing of the Motion to Dismiss, the Federal Rules of Civil Procedure instruct the court "to freely give leave [to amend the pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2). District courts may withhold leave "for reasons such as 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment,' or futility of

the amendment." United States ex rel. Ritchie v. Lockheed Martin Corp., 558 F.3d 1161, 1166 (10th Cir. 2009) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)).

In their memorandum opposing an amendment, Defendants Furlong and Radworkers assert that Cirk Tek has filed a lawsuit against ONG in the Federal District Court for the Western District of Texas and that ONG's investigation was inadequate because Cirk Tek's identity was publically available when the original complaint was filed. (ECF No. 17.) Assuming the Defendants assertions are true, they still give no caselaw or authority that would justify withholding leave. Reasons, such as those discussed in Lockheed Martin, do not exist here, and the Defendants do not suggest that they would be unduly prejudiced if leave were granted.

For these reasons, the court GRANTS the Plaintiff's motion and gives it leave to file an amended complaint.

DATED this 3rd day of December, 2015.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
U.S. District Court Judge