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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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DARRELL L. DEEM, et. al.,  
Plaintiffs,

v.

TRACEY BARON, et. al.,  
Defendants.

**MEMORANDUM DECISION  
AND ORDER**

2:15-CV-00755-DS

District Judge David Sam

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Defendants have moved the court for an order striking and dismissing Plaintiffs' Third Amended Complaint and dismissing this case due to "fraud upon this Court." ECF No. 150 at 1. Alternatively, they ask that the court strike the new claims for relief that allege fraud. For the following reasons, the court denies this motion.

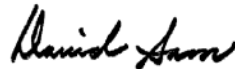
Defendants base their allegations of "fraud upon the court" on the fact that the first and second amended complaints did not allege that Mr. Baron had committed fraud, but the third amended complaint does assert a claim for fraud. However, Plaintiffs' Motion for Leave to File an Amendment states that "[S]ince the case was first filed, and as new information has been discovery [sic] during preparation of this case for trial, a number of issues have come to light or come into focus which were not clear earlier." ECF No. 109 at 2. Defendants also point out that when Plaintiff Darrel Deem was asked about these fraud claims during his deposition, he said, "No, I didn't know Mr. Baron committed fraud" (ECF No. 150 at 3), asserting that clearly these new fraud claims have no basis in fact, because Mr. Deem has "admitted" that they have no merit.

Defendant failed to mention, however, that the very next thing that Mr. Deem said, when asked during his deposition whether he believes that Mr. Baron did not commit fraud, was the following: “Well, maybe not on this issue, but there’s fraud in there somewhere.” ECF No. 153 at 3. While Mr. Deem’s statement at his deposition is indefinite and lacks particularity, the plaintiffs’ Third Amended Complaint sets forth with particularity a number of facts to support their claim of fraud. Defendants’ allegations of fraud upon the court are serious allegations requiring substantial evidence, and Defendants have presented no evidence on which to base their motion.

The court hereby GRANTS Defendants’ Motion for Enlargement to [File] Reply (ECF No. 156), and notes that it considered the arguments set forth in the reply in deciding the Motion to Strike. For the reasons stated above, and after careful consideration of all the pleadings, the court hereby DENIES Defendants’ Motion to Strike/Dismiss Plaintiffs’ Complaint. ECF No. 150. SO ORDERED.

DATED this 9th day of April, 2018.

BY THE COURT:



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DAVID SAM

United States District Judge