

1 HONORABLE RICHARD A. JONES
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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

11 BRIAN A. GLASSER, AS TRUSTEE OF
12 THE YELLOWSTONE CLUB
13 LIQUIDATING TRUST,

Case No. 2:14-cv-01576-RAJ

14 Plaintiff,

ORDER

15 v.

16 JESSICA T. BLIXSETH, individually; the
17 marital community of JESSICA T.
18 BLIXSETH and TIMOTHY L. BLIXSETH;
19 JTB, LLC, a Washington limited liability
20 company; CHERRILL B. FERGUSON,
21 individually; and the marital community of
22 CHERRILL B. FERGUSON and JOHN
DOE FERGUSON,

Defendants.

23 This matter comes before the court on defendant Cherrill B. Ferguson's motion
24 for protective order (Dkt. # 61), plaintiff's motion to amend complaint (Dkt. # 84),
25 defendants' motion to compel attendance of Brian Glasser (Dkt. # 125), and plaintiff's
26 motion to compel production of documents (Dkt. #130). The court held a telephonic
hearing to address these motions on October 15, 2015. This order summarizes the

1 court's rulings. As stated at the hearing, the court declines to award sanctions against
2 either party.

3 **A. Cherrill B. Ferguson's Motion for Protective Order**

4 For the reasons stated on the record, Mrs. Ferguson's motion (Dkt. # 61) is
5 DENIED. The discovery rules are to be liberally construed and absent some showing of
6 "annoyance, embarrassment, oppression, undue burden or expense," parties are allowed
7 to depose any person who may have relevant information. Fed. R. Civ. P. 26(c)(1).
8 Mrs. Ferguson simply has not made that showing and the court finds that she is likely to
9 have relevant information regarding the circumstances surrounding her receipt of the
10 \$600,000 at issue and the subsequent transfer of those funds. As such, plaintiff has the
11 right to depose her.

12 The parties agreed that Mrs. Ferguson's deposition will take place on October 22,
13 2015 at 1:00 p.m. at Mr. Kinsel's office. The court expects the deposition to go forward
14 on this date, unless the parties reach an alternative agreement. The court will not
15 entertain any additional motions related to the scheduling of this deposition.

16 **B. Motion to Amend Complaint**

17 Plaintiff seeks to amend the complaint to add a claim against defendants as
18 subsequent transferees of Kawish, LLC. For the reasons stated on the record, that
19 motion (Dkt. # 84) is GRANTED.

20 Federal Rule of Civil Procedure 15(a) provides that, after an initial period for
21 amendments as of right, pleadings may be amended only with the opposing party's
22 written consent or by leave of the court. Fed. R. Civ. P. 15(a). This rule should be
23 interpreted and applied with "extreme liberality." *Morongo Band of Mission Indians v.*
24 *Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Federal policy favors freely allowing
25 amendment so that cases may be decided on their merits. *See Martinez v. Newport*
26 *Beach City*, 125 F.3d 777, 785 (9th Cir. 1997).

The court does not find that the proposed amendment is sought in bad faith, that
it would cause undue delay, or that it would prejudice the opposing party. Additionally,
the amendment is not futile because it is possible that plaintiff could obtain a money

1 judgment against defendants and then seek to enforce that judgment against their assets.
2 Whether the transfer of Kawish, LLC was indeed a “fraudulent transfer” is an issue to
3 be determined at summary judgment or trial.

4 Accordingly, plaintiff is directed to file the Third Amended Complaint on or
5 before October 21, 2015.

6 **C. Motion to Compel Attendance of Brian Glasser**

7 As stated on the record, defendants’ motion (Dkt. # 125) is GRANTED. Mr.
8 Glasser shall appear by video conference on November 5, 2015 for his deposition,
9 which cannot exceed ten (10) hours. Defendants shall produce to plaintiff the exhibits
10 to be used at the deposition on or before November 3, 2015.

11 **D. Motion to Compel Production of Documents**

12 Plaintiff filed this motion seeking a number of documents, including data on a
13 thumb drive and documents pursuant to a subpoena to Patrick Ratte. With respect to the
14 thumb drive sought by plaintiff, defendants shall immediately create a duplicate of that
15 drive. As stated at the hearing, the parties shall meet and confer regarding: (1) a
16 timeline for production of an index or summary of the contents of the drive, and (2) the
17 retention of a third-party consultant who may be able to segregate the data on the drive.
18 The parties also agreed to meet and confer regarding the issues related to Mr. Ratte’s
19 subpoena.

20 Accordingly, this motion (Dkt. # 130) is DENIED WITHOUT PREJUDICE to
21 the re-filing of a similar motion after the parties have met and conferred as stated at the
22 hearing.

23 Dated this 16th day of October, 2015.

24 

25 The Honorable Richard A. Jones
26 United States District Judge