

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE NATIONAL BANK OF BIG )  
SPRING *et al.*, )  
)  
Plaintiffs, )  
)  
v. )  
) Case No. 1:12-cv-01032 (ESH)  
NEIL S. WOLIN,<sup>1</sup> in his official capacity as )  
Acting United States Secretary of the ) Judge: Hon. Ellen S. Huvelle  
Treasury and ex officio Chairman of the )  
Financial Stability Oversight Council )  
1500 Pennsylvania Avenue, NW )  
Washington, DC 20220, et al., )  
  
Defendants.

**MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,<sup>2</sup> as well as Rules 20 and 21,<sup>3</sup> Plaintiffs hereby respectfully move the Court for leave to file a Second Amended Complaint, a copy of which is attached hereto as Exhibit A. The Plaintiffs' Second Amended Complaint would add eight new plaintiffs: the State of Alabama, the State of Georgia, the State of Kansas, the State of Montana, the State of Nebraska, the State of Ohio, the State of Texas, and the State of West Virginia ("New Plaintiff States"). The Second Amended Complaint would

---

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Acting U.S. Secretary of the Treasury Wolin has been substituted as a defendant for former Secretary Geithner.

<sup>2</sup> Rule 15(a) provides that a party may amend its pleading once as a matter of course within 21 days after serving the pleading or if a responsive pleading is required, the earlier of 21 days after service or 21 days after service of a motion under Rule 12(b), (e) or (f). In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a). Because Defendants have filed Motion to Dismiss pursuant to 12(b)(1) and more than 21 days have elapsed since that filing, leave of Court is required.

<sup>3</sup> Rules 20 and 21 govern joinder of additional parties. Rule 21 specifies that "[o]n motion or on its own, the court may at any time, or just terms, add or drop a party," and courts apply the same liberal standard to joinder under Rule 21 that they do to amendments to pleadings under Rule 15. *Health Research Grp. v. Kennedy*, 82 F.R.D. 21, 24-25 (D.D.C. 1979).

otherwise leave the causes of action and substantive claims asserted in the current complaint [Dkt. No. 6] unchanged.

Because there are no substantive changes to the Plaintiffs' allegations, Plaintiffs have offered to stipulate that Defendant's Motion to Dismiss [Dkt. No. 15] should apply to the Second Amended Complaint, including the New Plaintiff States, and that Defendants would not otherwise be obligated to respond to the Second Amended Complaint. After conferring with Defendants, Plaintiffs are authorized to state that the Defendants take no position at this time on the instant motion or Plaintiffs' proposed stipulation, but will respond in due course.<sup>4</sup>

\*\*\*

Courts follow a well-established policy of providing for leave to be "freely given when justice so requires." *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (citing Fed. R. Civ. P. 15(a)). Allowing amendment would permit the Attorneys General of Alabama, Georgia, Kansas, Montana, Nebraska, Ohio, Texas, and West Virginia to join this litigation. At the same time, no prejudice to the Defendants would result here. The substantive allegations in the complaint would remain unchanged. And as explained above, Plaintiffs are willing to stipulate that Defendants would not be obligated to file a new responsive pleading, and that the Defendants' current motion to dismiss can be applied to the Second Amended Complaint and New Plaintiff States. Furthermore, any delay in the litigation would be minimized because the briefing on the Motion to Dismiss can remain on a unified schedule. Finally, amending the complaint is clearly the most efficient way to proceed, as the eight new state Plaintiffs would otherwise be forced to file a new action raising identical claims. *See Health Resources Grp.*, 82 F.R.D. at 28-29 ("if the Court refused leave to amend, these [plaintiffs'] could simply start this action over again at the complaint stage.").

---

<sup>4</sup> Defendants assert the right to file a new motion to dismiss if they wish. If Defendants elect to stand on their current Motion to Dismiss, however, Plaintiffs will commit to filing their responses to that motion within 24 hours.

For the reasons stated above, Plaintiffs respectfully request that the Court grant the Plaintiffs' Motion for Leave to File a Second Amended Complaint, and order that the Plaintiffs' Second Amended Complaint be entered on the docket of Case No. 1:12-cv-01032 effective as of the date of the Court's order. The Plaintiffs further respectfully request that the Court's order specify that Defendants are not obligated to file a new response to the Plaintiffs' Second Amended Complaint, and that the Defendants may elect to apply their current Motion to Dismiss to the Second Amended Complaint. Plaintiffs further respectfully request that the Court order Defendants to notify Plaintiffs whether they intend to apply their current Motion to Dismiss to the Second Amended Complaint within 14 days of the Court's order granting leave to amend, and that if Defendants do elect to stand on their current Motion to Dismiss, Plaintiffs will be required to file their response within 24 hours of being notified of Defendants' election.

Dated: February 13, 2013

Respectfully submitted,

s/Gregory Jacob\_\_\_\_\_

Gregory Jacob (D.C. Bar 474639)  
O'MELVENY & MYERS LLP  
1625 I St. NW  
Washington, DC 20006  
(202) 383-5110  
(202) 383-5413 (fax)  
gjacob@omm.com

C. Boyden Gray (D.C. Bar 122663)  
Adam J. White (D.C. Bar 502007)  
BOYDEN GRAY & ASSOCIATES P.L.L.C.  
1627 I St. NW, Suite 950  
Washington, DC 20006  
(202) 955-0620  
(202) 955-0621 (fax)  
adam@boydengrayassociates.com

***Counsel for Plaintiffs State National Bank  
of Big Spring, the 60-Plus Association,  
Inc., and the Competitive Enterprise  
Institute***

s/Bill Schuette

Bill Schuette  
Attorney General of Michigan  
G. Mennen Williams Building, 7th Floor  
525 W. Ottawa St.  
P.O. Box 30212  
Lansing, MI 48909  
miag@michigan.gov  
(517) 373-1110  
(517) 373-3042 (fax)

***Plaintiff on Behalf of the People of  
Michigan***

s/E. Scott Pruitt

E. Scott Pruitt  
Attorney General of Oklahoma  
Office of the Attorney General  
313 NE 21st Street  
Oklahoma City, OK 73105  
scott.pruitt@oag.ok.gov  
(405) 521-3921  
(405) 522-0669 (fax)

***Counsel for Plaintiff the State of  
Oklahoma***

s/Alan Wilson

Alan Wilson  
Attorney General of South Carolina  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201  
AGAlanWilson@SCAG.gov  
(803) 734-3970  
(803) 734-4323 (fax)

***Counsel for Plaintiff the State of South  
Carolina***

Sam Kazman (D.C. Bar 946376)  
Hans Bader (D.C. Bar. 466545)  
COMPETITIVE ENTERPRISE INSTITUTE  
1899 L St. NW, Floor 12  
Washington, DC 20036  
(202) 331-1010

(202) 331-0640 (fax)  
skazman@cei.org

***Co-counsel for Plaintiff  
Competitive Enterprise Institute***

**Certificate of Service**

I, Gregory Jacob, hereby certify that on February 13, 2013, I electronically filed the foregoing Motion for Leave to Filed Second Amended Complaint through the CM/ECF system, which will send a notice of electronic filing to counsel for the defendants named in the initial Complaint for Declaratory and Injunctive Relief in this matter.

s/Gregory Jacob  
Gregory Jacob  
O'Melveny & Myers, LLP  
1625 Eye St., NW  
Washington, DC 20006  
Telephone: (202) 383-5300  
Facsimile: (202) 383-5414  
Email: gjacob@omm.com