

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE HONORABLE OTTO J. REICH and
OTTO REICH ASSOCIATES, LLC,

Plaintiffs,

v.

LEOPOLDO ALEJANDRO BETANCOURT LOPEZ,
PEDRO JOSE TREBBAU LOPEZ, and FRANCISCO
D'AGOSTINO CASADO,

Defendants.

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) Civ. No. 13 CV 5307 (JPO)
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) ECF CASE
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DECLARATION OF MARK W. SMITH, ESQ.

I, MARK W. SMITH, declare under penalty of perjury as follows:

1. I am counsel to Plaintiffs the Honorable Otto J. Reich and Otto Reich Associates, LLC (together, "Plaintiffs") in this action and am fully familiar with the facts set forth herein. I submit this Declaration in support of Plaintiffs' Motion Pursuant To Fed. R. Civ. P. 15(a)(2) For Leave To File Second Amended Complaint. Plaintiffs respectfully request that the Court grant them leave to file a Second Amended Complaint in this action in a form substantially similar to Exhibit A hereto.

2. The original Complaint in this action was filed on July 30, 2013.

3. On December 23, 2013, Defendants Alejandro Betancourt Lopez ("Betancourt"), Pedro Jose Trebbau Lopez ("Trebbau"), and Francisco D'Agostino Casado ("D'Agostino" and, together with Betancourt and Trebbau, "Defendants") filed motions to dismiss the Complaint seeking, *inter alia*, the dismissal of Plaintiffs' RICO claims pursuant to Fed. R. Civ. P. 12(b)(6)

(the “Initial Dismissal Motions”). Betancourt and Trebbau also moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction.

4. Plaintiffs filed a First Amended Complaint on January 13, 2014.

5. On February 28, 2014, Defendants filed new motions to dismiss the First Amended Complaint, asking the Court to dismiss the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) (the “Dismissal Motions”).

6. On August 18, 2014, the Court issued an Opinion and Order on the Dismissal Motions, which dismissed Plaintiffs’ RICO claims pursuant to Fed. R. Civ. P. 12(b)(6) and authorized Plaintiffs to conduct jurisdictional discovery with respect to Betancourt and Trebbau (the “August 2014 Decision”).

7. On September 2, 2014, Plaintiffs filed a motion seeking reconsideration of the Court’s August 2014 Decision concerning Plaintiffs’ RICO claims.

8. Following jurisdictional discovery, on December 23, 2014, Betancourt and Trebbau filed renewed motions seeking to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) (the “Renewed Jurisdictional Motions”). The Renewed Jurisdictional Motions have been fully briefed and await determination by the Court.

9. On April 13, 2015, the Court issued its decision on Plaintiffs’ motion for reconsideration (the “Reconsideration Decision”). The Reconsideration Decision clarified the August 2014 Decision, which had dismissed Plaintiffs’ RICO claims on relatedness grounds. A true and correct copy of the Court’s Reconsideration Decision is attached hereto as Exhibit B.

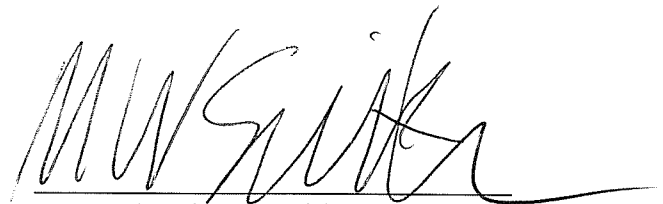
10. There has been no merits discovery conducted by the parties, and trial is far in the future. Indeed, though originally filed in July 2013, this case has been effectively stayed – with

the exception of extremely limited personal jurisdictional discovery, which Defendants vigorously opposed – since the filing of the Initial Dismissal Motions in December 2013.

11. Plaintiffs respectfully request that the Court grant Plaintiffs leave to file their Second Amended Complaint in this action, and grant Plaintiffs such other and further relief as the Court may deem just and proper.

12. I declare under penalty or perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: New York, New York
April 27, 2015



Mark W. Smith, Esq.

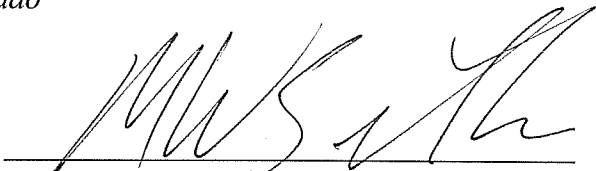
CERTIFICATE OF SERVICE

I hereby certify this 27th day of April, 2015, that I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification to the following attorneys of record, and is available for viewing and downloading:

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