

1 Assistant Attorney General Robert Goldberg.¹

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3 Upon consideration of the written and oral argument of counsel, the Court hereby
4 DENIES plaintiffs' motion to consolidate because it is not properly before the Court. The
5 Court also DENIES plaintiffs' motion to amend as proposed because it indicates an
6 amendment which consolidates cases that are not properly before the Court.

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8 Plaintiffs' motion to consolidate is not properly before the Court because there is no
9 viable complaint on file in this action, thus there is no case to consolidate. The complaint in
10 this action was dismissed without prejudice as to defendant CNMI on February 17, 2000.
11 (Feb. 18, 2000 Am. Notice of Order Granting Mots. of Commonwealth to Dismiss and to
12 Quash) Plaintiffs were not granted leave to amend at that time. (Id.) The complaint was
13 dismissed without prejudice as to defendant United States on April 10, 2000 and plaintiffs
14 were given leave to amend and re-file their complaint. (April 10, 2000 Order Granting Def.
15 United States' Mot. to Dismiss).

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17 On March 2, 2000, prior to the Court's issuance of its April 10, 2000 Order
18 permitting amendment of the complaint, plaintiffs filed their motion to consolidate and
19 amend. Pursuant to Local Rule 15.1, plaintiffs were required to file a proposed second
20 amended complaint with their motion, but did not file it until March 21, 2000, nine days
21 before the scheduled hearing. The hearing on the motion to consolidate and amend
22 commenced on March 30, 2000 but was continued upon agreement of the parties. (March
23 31, 2000 Order Continuing Hr'g on Pls.' Mot. to Consolidate Cases and File Second Am.

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26 ¹The CNMI has been dismissed from this action, however, the Court requested the CNMI to
submit a brief as amicus curiae to address the issues raised in plaintiffs' motion.

1 Compl.) The Court also struck plaintiffs' proposed second amended complaint/
2 supplemental exhibit because it was filed untimely and without leave of Court. (Id.)
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4 Because plaintiffs' proposed amended complaint has been stricken and no amended
5 complaint has since been filed in this case, there is nothing before the Court to consolidate.
6 Further, plaintiffs' second amended complaint, as originally proposed, was improperly
7 consolidated with the complaint in Civil Action No. 00-0005. For these reasons, plaintiffs'
8 motion to consolidate cases and to file a consolidated complaint is denied.
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10 The Court's Order of April 10, 2000 permitting plaintiffs to file a second amended
11 complaint in this action did not give plaintiffs a time certain to file an amended complaint.
12 The Court now orders that the amended complaint in this action be filed within 20 days of
13 the date of this Order. Because the case has not progressed beyond the initial pleadings,
14 plaintiffs may amend their complaint to add new parties and new causes of action as
15 requested in their motion without resulting in prejudice to defendants. If and when the
16 complaint in this action and in Civil Action No. 00-0005 have been amended and are
17 properly before the Court, the Court will consider the propriety of consolidation either on
18 its own motion or motion by any party, or by stipulation of the parties.
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20 The Court also notes that plaintiffs have yet to effect service of process on
21 defendants in this matter. The 120 day deadline for serving the parties expired on January
22 3, 2000 and an extension of the 120 day deadline has not been granted to plaintiffs; thus
23 plaintiffs purported service of a summons and first amended complaint on defendants on
24 January 21, 2000, January 24, 2000 and March 1, 2000 has no effect. The expiration of the
25 120 day period, however, does not bar plaintiffs from re-filing an amended complaint in this
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action and thus initiating a new 120 day period in which to effect service of process. *See* Townsel v. County of Contra Costa, California, 820 F.2d 319, 320-321 and n.1 (9th Cir. 1987) (court notes Fed.R.Civ.P. 4(m) provides for dismissal without prejudice where service is not effected within 120 day time period but that running of statute of limitations on the claims may effectively make dismissal of the complaint with prejudice). Any issue that the claims plaintiffs assert in the amended pleading are otherwise time-barred by the applicable statute of limitations may be raised by defendants in their answer or on motion.

Accordingly, plaintiffs' motion to consolidate cases is denied and plaintiffs' motion to file a consolidated second amended complaint is denied. Pursuant to the Court's Order of April 10, 2000 permitting plaintiffs to file a second amended complaint and pursuant to this Order permitting amendment to include additional parties and claims as requested in their motion, plaintiffs shall have 20 days from the date of this Order to file their second amended complaint.

IT IS SO ORDERED.

DATED this 22nd day of June, 2000.



Alex R. Munson
District Judge