

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIMON BRONNER, et al.,

Plaintiffs,

and SIMON BRONNER,
DERIVATIVELY ON BEHALF OF
NOMINAL DEFENDANT, THE
AMERICAN STUDIES ASSOCIATION,

Derivative Plaintiff,

v.

LISA DUGGAN, et al.,

Defendants.

Case No: 1:16-cv-00740-RC

OPPOSITION TO PLAINTIFFS' MOTION TO EXTEND TIME TO ADD PARTIES

The Plaintiffs move at the eleventh hour for additional time to add as Defendants persons whom the *Plaintiffs said they would name as Defendants nearly two months ago*.

Thus, the explanation in their Motion - blaming their delay on Defendants - is pretext.

The Motion should be denied.

In considering the request for additional time, the Court should be advised that nearly two months ago, on September 12, during a meet and confer requested by the Plaintiffs in regards to a Motion to Amend their Complaint (see email of September 11, 2017, **Exhibit A**),¹ Plaintiffs advised the Defendants they were going to add two additional persons as Defendants, Jasbir Puar and J. Kehaulani Kauanui. At no time

¹ The Plaintiffs had once previously amended their Complaint.

during that meet and confer did Plaintiffs indicate that they needed any additional information to enable them to add Ms. Puar and Ms. Kauanui as parties. Then, in a telephone call on November 2, after Plaintiffs had filed the current Motion, Plaintiffs confirmed that these two individuals, Jasbir Puar and J. Kehaulani Kauanui are the individuals whom they intend to add as Defendants. Plaintiffs claim they need additional time because of some delay by Defendants is thus belied. Indeed, Plaintiffs argue that they received numerous documents on October 17 that they have had little time to review. However, that was more than a month after they had announced that they were going to move to amend the Complaint to add these very same individuals.

Even putting aside that the Plaintiffs announced their intention nearly two months ago to name these two individuals, they have known of these individuals for a much longer time. For example, Ms. Kauanui was identified in the initial Complaint filed over a year and a half ago. Her role was described in the Complaint thus:

i. J. Kehaulani Kauanui was a councilmember of the ASA at the time of the adoption of the Boycott Resolution and whole-hearted supporter of that resolution. She is an advisory board member of the U.S. Campaign for the Academic and Cultural Boycott of Israel (USACBI), “a U.S. campaign focused on a boycott of Israeli academic and cultural institutions, responding to the call of Palestinian civil society to join the Boycott, Divestment, and Sanctions movement against Israel.” (<http://www.usacbi.org>.) She has been quoted as stating that the decision by the American Anthropological Association to put an Israel boycott resolution to a full membership vote was “a huge win for keeping both Palestine and academic boycott on the table within the association.” Alex Kane, *The Year Ahead in Academic Boycotts of Israel*, Mondoweiss (Jan. 6, 2015), <http://mondoweiss.net/2015/01/academic-boycotts-israel/#sthash.1nnpNWkc.dpuf>.

Complaint, ¶69. In addition, Ms. Puar was identified in Plaintiff’s initial disclosures filed on (see **Exhibit B**). She was also the subject of one of the Plaintiff’s request for documents, served several months ago (see **Exhibit C**).

Further, adding these persons as Defendants at this late date would be (a) futile, considering that the Resolution at issue in this case was passed in December 2013, more than three years ago, and (b) would unnecessarily delay the case and run up expenses, to the prejudice of the existing Defendants. In addition, any new parties would need to evaluate whatever claims were being made against them, file any necessary motions, and, potentially, engage in discovery themselves.²

For the preceding reasons, the Motion should be denied.

² Defendants also question the extent to which it is necessary to add yet more individuals as Defendants in litigation that concerns a resolution by a non-profit academic entity. There are already six Defendants in this case, five of whom are individuals. It has been Defendants’ position all along that one of Plaintiffs’ primary motives is to punish and thus deter through litigation individuals they believe to be associated with the boycott of Israeli academic institutions.

Respectfully submitted,

/s/

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2105521

Seaman, Jeffrey C.

From: Jennie Gross <jenniegross@brandeiscenter.com>
Sent: Monday, September 11, 2017 11:54 AM
To: Hathway, John J.; Seaman, Jeffrey C.; Mugavero, Thomas
Cc: Jerome M. Marcus
Subject: Re: Motion for Leave to File Amended Complaint

10 am tomorrow is fine for us.
Talk to you then,
Jennie

Jennie Gross
The Louis D. Brandeis Center
for Human Rights Under Law

From: "Hathway, John J." <JHathway@wtplaw.com>
Date: Monday, September 11, 2017 at 9:54 AM
To: Jennie Gross <jenniegross@brandeiscenter.com>, "Seaman, Jeffrey C." <JSeaman@wtplaw.com>, "Mugavero, Thomas" <TMugavero@wtplaw.com>
Cc: "Jerome M. Marcus" <jmarcus@marcusauerbach.com>
Subject: RE: Motion for Leave to File Amended Complaint

Tomorrow anytime between 10 and 2 will work, and let's also discuss the PO.

-----Original Message-----

From: Jennie Gross [<mailto:jenniegross@brandeiscenter.com>]
Sent: Friday, September 08, 2017 8:53 AM
To: Hathway, John J.; Seaman, Jeffrey C.; Mugavero, Thomas
Cc: Jerome M. Marcus
Subject: Motion for Leave to File Amended Complaint

Counsel,

Please let us know your availability to meet and confer re a motion for leave to file a second amended complaint. The second amended complaint names additional defendants and new claims for breach of fiduciary duty and ultra vires actions in violation of specific provisions of the bylaws. The claims are direct, not derivative. We intend to file the motion early next week.

Thank you,
Jennie

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SIMON BRONNER, MICHAEL
ROCKLAND, CHARLES D. KUPFER, and
MICHAEL L. BARTON,

Plaintiffs,

v.

LISA DUGGAN, CURTIS MAREZ, AVERY
GORDON, NEFERTI TADIAR, SUNAINA
MAIRA, CHANDAN REDDY, and THE
AMERICAN STUDIES ASSOCIATION

Defendants.

Civil Action No. 16-cv-00740-RC

PLAINTIFFS' INITIAL DISCLOSURES PURSUANT TO FED.R.CIV.P. 26

Pursuant to Fed. R. Civ. P. 26(a), Plaintiffs Simon Bronner, Michael Rockland, Charles D. Kupfer, and Michael L. Barton (collectively, "Plaintiffs"), through the undersigned counsel, serves these Initial Disclosures to Defendants.

Plaintiffs' Initial Disclosures are made without the benefit of any discovery, and Plaintiffs reserves the right to amend these disclosures to add potential witnesses.

**I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION
THAT MAY BE USED TO SUPPORT PLAINTIFFS' CLAIMS**

The following list identifies individuals, other than the named plaintiffs and defendants, who may have discoverable information relevant to disputed facts alleged in the complaint. All

are current members of the ASA, with the exception of Ms. Michel, who may no longer be a member.

Lisa Duggan, New York University
Former president of ASA

J. Kehaulani Kauanui, Wesleyan University
Former member of ASA council

Jodi Melamed, Marquette University
Co-chair of ASA 2013 Program Committee

Jasbir Puar, Rutgers University
Former member of ASA Nominating Committee

Nadine Naber, University of Illinois - Chicago
Member of ASA Council

Sonya Michel
3 Delford Avenue
Silver Spring, MD 20904
Former member of ASA

And all persons identified by Defendants

Plaintiffs reserve the right to update this list to the extent that discovery or investigation yields additional persons with potentially relevant knowledge.

II. CATEGORIES AND LOCATION OF DOCUMENTS

Correspondence regarding the resolution between the plaintiffs and ASA, in possession of respective plaintiffs

A speech given by Plaintiff Rockland regarding the resolution, in possession of Plaintiff Rockland

Plaintiff Kupfer's written comments opposing the resolution, in the possession of Plaintiff Kupfer

III. COMPUTATION OF DAMAGES

Plaintiffs do not currently have any calculations of damages, as all data upon which such calculations will be based are exclusively in the hands of the Defendants. Among the categories of damages which Plaintiffs expect to seek are the following:

- A. Loss of revenue by the ASA as a result of its adoption of the Resolution
- B. ASA funds expended:
 - to promote adoption of the Resolution, to rally support for it before and after it was voted on, and to defend the ASA and those officers who participated in promoting the Resolution;
 - for the cause of boycotting Israel and Israeli institutions, before and after the Resolution was voted on, and
 - for all other “social justice” and “social change” activities of the ASA promoted by the individual Defendants and others acting in concert with them.
- C. Attorney’s fees and expenses incurred by Plaintiffs

IV. INSURANCE

Plaintiffs are not aware of an insurance agreement that would indemnify or reimburse any party for payments to satisfy a judgment in this case.

Dated: May 15, 2017

MARCUS & AUERBACH LLC



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Counsel for Plaintiffs

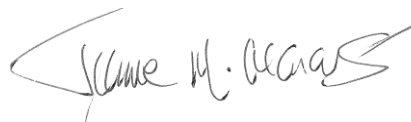
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FOR HUMAN RIGHTS UNDER LAW**

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Washington, DC 2006-4623
(202) 559-9296

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Plaintiffs' Initial Disclosures Pursuant to Fed.R.Civ.P 26* was served on all counsel of record by e-mail on May 15, 2017.

A handwritten signature in black ink, appearing to read "Jerome M. Marcus". The signature is written in a cursive style with a large, sweeping initial "J".

Jerome M. Marcus

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PLAINTIFFS' REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiffs Simon Bronner, Michael Rockland, Charles D. Kupfer, and Michael L. Barton (collectively, "Plaintiffs"), through their counsel, request Defendants to produce the documents specified below, within thirty (30) days of service, to:

The Louis D. Brandeis Center for Human Rights Under Law
Attention: Jennifer Gross
1717 Pennsylvania Avenue, N.W., Suite 1025
Washington, D.C. 20006

Defendants' production of documents shall be in accordance with the Instructions and Definitions set forth below and Rule 34 of the Federal Rules of Civil Procedure.

32. Documents pertaining to the nomination of Jasbir Puar to the Nominating Committee, and to the nomination of all other members of the Nominating Committee subsequent to the nomination of Jasbir Puar.

RESPONSE:

33. All documents pertaining to USACBI, including but not limited to documents received from USACBI, sent to USACBI, or created, edited, or circulated by or on behalf of USACBI, the USACBI Organizing Committee, or the USACBI Advisory Committee, including but not limited to:
- a. Documents pertaining to planning for, introducing, drafting, supporting, funding, voting processes for, or the adoption of the Resolution or a similar resolution at another academic association
 - b. Documents pertaining to encouraging, recommending, or recruiting new members to join ASA or any other organization where a boycott of Israel is being considered, expected to be introduced, or pending vote
 - c. Documents pertaining appointing members of USACBI to the ASA nominating committee, or the nominating committees of other academic associations
 - d. Documents pertaining to the nomination or election of members of USACBI for positions as officers or on the National Council of ASA
 - e. Documents pertaining to the nomination or election of officers or council members or any other academic associations.

RESPONSE:

34. Documents pertaining to the placement or election of USACBI members (or members sympathetic to the Resolution or boycotts of Israel generally) to positions on the ASA nominating committee, or the nominating committees of other academic associations.

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Defendants.

Case No: 1:16-cv-00740-RC

ORDER DENYING PLAINTIFFS' MOTION TO EXTEND TIME TO ADD PARTIES

Upon Motion by the Plaintiffs, the Court having considered same,

IT IS ORDERED that the Motion is DENIED.

Rudolph Contreras, Judge

cc: All counsel of record