

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ZHAOYIN WANG,
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,
AND ZHEJIANG BETA PHARMA
CO., LTD.,
Defendants.

Civil Action No. 3:14-cv-01790-VLB

FEBRUARY 12, 2015

**SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO TRANSFER AND IN
RESPONSE TO PLAINTIFF'S SURREPLY BRIEF**

Upon the Court's authorization, defendants Beta Pharma, Inc. ("Beta Pharma"), and Don Zhang ("Dr. Zhang") (collectively "Defendants") hereby file this Supplemental Brief in further support of their Motion to Transfer This Action to the United States District Court for the District of New Jersey (the "Motion to Transfer") [D.E. #17], responding to false arguments made in the ultra vires surreply brief, titled "Request for Judicial Notice," that plaintiff Zhaoyin Wang filed on February 5, 2015 (the "Surreply Brief") [D.E. #36].

I. **Relevant Facts and Procedural Posture**

On January 16, 2015, Defendants filed a Reply Brief in further support of the Motion to Transfer (the "Reply Brief") [D.E. #31].

On February 5, 2015, Plaintiff filed the Surreply Brief, titling it a "Request for Judicial Notice." As Defendants explained in their Motion for Permission to

137

File Supplemental Brief, while the Surreply Brief purports to be a Request for Judicial Notice filed pursuant to Federal Rule of Evidence 201, it is in fact a surreply brief that makes arguments in opposition to the Motion to Transfer, and specifically responds to the Reply Brief.

The filing of the Surreply Brief, in the absence of permission from the Court, was itself improper. Neither the Federal Rules of Civil Procedure nor the Local Rules of this Court provide an automatic right to file a surreply brief. See, e.g., Local Rule 7. Plaintiff failed to move the Court for permission to file a surreply brief. To respond to the false arguments made in the Surreply Brief, Defendants moved for permission to file this Supplemental Brief.

II. Plaintiff's Surreply Has No Merit

A. The Documents That Plaintiff Presents in the Surreply Brief Do Not Cast Doubt on Dr. Zhang's Credibility or Support Plaintiff's Position on the Motion to Transfer

Defendants explained in their Reply Brief that the interests of justice and the convenience of the witnesses weigh heavily in favor of transferring this action to the District of New Jersey, in part because Beta Pharma and its employees are located in New Jersey, as they have been since well before this action was filed. See Reply Brief at 9-28. To support that argument, Defendants offered Dr. Zhang's affidavit testimony that Beta Pharma moved from Connecticut to New Jersey in November 2011 and that since that time, all of Beta Pharma's employees have worked in New Jersey. Zhang Supp. Aff. ¶¶ 11, 15.

In his improper Surreply, Plaintiff now argues that Dr. Zhang's testimony is contradicted by four documents that Defendants submitted in Shao v. Beta

Pharma, Inc., No. 3:14CV01177 (CSH), pending before the District of Connecticut. Defendants submitted the documents to support a motion to disqualify Attorney Katz, who also represents the plaintiffs in that action (the "Motion to Disqualify"). Those documents are four emails and email strings. Plaintiff observes that the signature blocks of those emails, sent by Dr. Zhang and Beta Pharma's then attorney, Lance Liu, show a Branford, Connecticut address for Beta Pharma after November 2011. He argues that these documents cast doubt on Dr. Zhang's affidavit testimony because they show Connecticut addresses after Beta Pharma's move to New Jersey in November 2011. Surreply Brief at 1-2.

However, the fact that these emails used the Branford, Connecticut address for Beta Pharma is actually consistent with Dr. Zhang's affidavit testimony. In the Supplemental Affidavit, Dr. Zhang explained as follows:

36. After November 2011, documents and emails using a Connecticut Beta Pharma address are in error. Again, as of November 2011, Beta Pharma had no presence in Connecticut. This is a plain and simple fact.

39. Similarly, if I ever listed a Connecticut address on the signature block of my email in 2012, that was an administrative mistake.

Zhang Supp. Aff., ¶¶ 36, 39 (emphasis added). Dr. Zhang stated that documents listing a Connecticut address after November 2011 are nothing more than an administrative error. As such, these documents neither cast doubt on Dr.

Zhang's credibility or suggest that Beta Pharma maintained a business presence in Connecticut after November 2011 (it did not).

B. The Stock Agreements Attached to Plaintiff's Improper Surreply, Listing Connecticut Addresses, are Irrelevant Because They are Dated Before Defendants Moved Operations to New Jersey

Plaintiff's Surreply Brief attaches stock agreements that were also exhibits to Defendants' reply brief in support of their Motion to Disqualify in the Shao action. Presumably, Plaintiff attached such agreements because they listed a Connecticut address for Beta Pharma. However, these stock agreements are dated well before Beta Pharma moved to New Jersey and, therefore, do not support Plaintiff's argument.

The last dates on these stock agreements are as follows:

(1) Liu Qian agreement (Exhibit 5): April 14, 2011.

(2) Hongliang Chu agreement (Exhibit 6): February 16, 2010.

Both agreements date from before November 2011. The second even dates to a time before the alleged March 26, 2010 "partnership agreement" that is the basis for Plaintiff's claims in this case. See Complaint ¶ 10. Thus, the use of the Connecticut address on these agreements does not contradict Dr. Zhang's statements or Defendant's arguments in support of the Motion to Transfer. Beta Pharma does not argue that it never had operations in Connecticut; rather, it documented that such operations ended in November 2011, well before Plaintiff filed this action.

III. Other Evidence Proves That Beta Pharma Was Located in New Jersey After November 2011

Plaintiff's argument that email signature blocks establish that Beta Pharma was located in Connecticut after November 2011 is refuted by additional emails regarding Beta Pharma's move to New Jersey.

By presenting, in his Surreply, four emails or email strings with mistaken addresses, Plaintiff has opened the door for Defendants to submit additional evidence proving that Beta Pharma moved its operations from Connecticut to New Jersey in November 2011.

Attached to the Declaration of Don Zhang are emails from November and December 2011 in which Dr. Zhang notifies a business contact that Beta Pharma has moved its operations to New Jersey. Zhang Decl., Exh. 1 and 2. These emails definitively put to rest the issue of whether Beta Pharma moved to New Jersey in November 2011. It did.

**DEFENDANTS BETA PHARMA, INC. AND DON
ZHANG**

By: /s/
Michael G. Caldwell, ct26561
LeClairRyan, A Professional Corporation
545 Long Wharf Drive, Ninth Floor
New Haven, Connecticut 06511
Telephone: (203) 672-1636
Facsimile: (203) 672-1656
Email michael.caldwell@leclairryan.com
-- Their Attorney--

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2015 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

Michael G. Caldwell (ct 26561)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ZHAOYIN WANG,
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,
AND ZHEJIANG BETA PHARMA
CO., LTD.,
Defendants.

Civil Action No. 3:14-cv-01790-VLB

FEBRUARY 6, 2015

DECLARATION OF DON ZHANG
PURSUANT TO 28 U.S.C. § 1746

I, Don Zhang, say:

1. Attached as Exhibit 1 is an email dated November 17, 2011 in which I explain that "we have moved in New Jersey since Nov. 16th." This email refers to Beta Pharma, Inc. moving its operations from Connecticut to New Jersey.

2. Attached as Exhibit 2 is an email dated December 9, 2011 in which I state that "we [meaning Beta Pharma, Inc.] have rented apartment in Princeton Meadows (Plainsboro) as our temporary office." Then Beta Pharma, Inc. moved its office to its present location in Princeton, New Jersey.

Under 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on February 6, 2015

/s/
Don Zhang

EXHIBIT 1

From: Don Zhang [<mailto:don.pharmanan@gmail.com>]
Sent: Thursday, November 17, 2011 11:42 AM
To: by2127
Cc: Z Wang; zwang.ca@gmail.com; jirong.peng@betapharma.com
Subject: Re: Regulatory consulting contact

Hey Bing,

Great to know you are back from your trip! We are also back from our trips! We have moved in New Jersey since Nov. 16th. Our address is: 2608 Pheasant Hollow Drive, Plainsboro, NJ 08536.

How about you pick up a place between your home and our apartment and we meet there then? Thanks! Looking forward to hearing from you!

Don

EXHIBIT 2

From: Don Zhang [<mailto:don.pharmaman@gmail.com>]
Sent: Friday, December 9, 2011 11:52 AM
To: ML
Cc: lrong_peng@betapharma.com; Amy Chen
Subject: Re: Re:

Hey Mike,

Great to hear from you!
We have rented apartment in Princeton Meadows (Plainsboro) as our temporary office since it is so close to Newark Airport.
the address is:
2608 Pheasant Hollow Dr., Princeton Meadows, NJ 08536.

Maybe we can meet in New Jersey when you arrive in Newark Airport if your flight is arrival here. Or we try to meet next weekend at a place you like.

Thanks a lot and looking forward to hearing from you!

Don

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ZHAOYIN WANG,
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,
AND ZHEJIANG BETA PHARMA
CO., LTD.,
Defendants.

No. 3:14CV1790 (VLB)

FEBRUARY 17, 2015

MOTION FOR PERMISSION TO EXCEED PAGE LIMIT

Defendants Beta Pharma, Inc. (“Beta Pharma”) and Don Zhang (“Zhang”) (together, “Defendants”) hereby move for permission to file a Reply Memorandum of Law (“Reply Brief”) in excess of the page limit contained in Rule 7(d) of the Local Rules of this Court. Good cause exists for the Court to grant Defendants permission to file a Reply Brief with respect to their Motion to Dismiss [D.E. #26] that would exceed the regular page limit. Defendants require such space to respond to factual and legal issues raised by Plaintiff in the brief he filed on February 4, 2015 (the “Opposition”) in opposition to the Motion to Dismiss [D.E. #35].

In general, Rule 7(d) limits a reply brief to ten (10) pages. Defendants understand that because of this Court’s special font requirements, the page limit for this Reply Brief is eleven (11) pages. However, good cause exists to grant Defendants permission to exceed that limit. Plaintiff’s 37-page Opposition raised a number of new issues that require a response from Defendants. For example,

Plaintiff: (1) made lengthy and complex arguments about the application of the economic loss doctrine to his tort claims; (2) provided new characterizations of his tort claims, such as arguing that they are based on statements made before the parties entered into the agreement at issue that were intended as inducements; (3) provided new versions of the fiduciary relationships that allegedly support his claims for breach of fiduciary duty; (4) provided misleading characterizations of his fraud allegations in order to argue that he has satisfied the particularity requirement of Federal Rule 9(b); and (5) mischaracterized the impact of his request for punitive damages on the economic loss doctrine. All of these arguments (and others) and characterizations require rebuttal by Defendants in order to present these issues appropriately to the Court, and the space required to do so exceeds eleven pages. Defendants anticipate needing no more than an additional six pages.

WHEREFORE, Defendants respectfully request that the Court grant them permission to file a Reply Brief on their Motion to Disqualify of greater than eleven (11) pages.

DEFENDANTS BETA PHARMA, INC. AND
DON ZHANG,

By: /s/
Michael G. Caldwell (ct26561)
LeClairRyan, A Professional Corporation
545 Long Wharf Drive, Ninth Floor
New Haven, Connecticut 06511
Telephone: (203) 672-1636
Facsimile: (203) 672-1656
Email michael.caldwell@leclairryan.com

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2015 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

Michael G. Caldwell (ct 26561)