

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 18, 2015

REPLY TO PLAINTIFF'S OBJECTION TO
MOTION FOR PERMISSION TO EXCEED PAGE LIMIT

Defendants Beta Pharma, Inc. ("Beta Pharma") and Don Zhang ("Zhang") (together, "Defendants") hereby respond to Plaintiff's Objection [D.E. #41] to Defendants' Motion to Exceed Page Limit .

Defendants moved for permission to file a Reply Brief in excess of the page limit in Rule 7(d) of the Local Rules of this Court solely because such additional space is needed to provide an appropriate response to the substantial set of issues raised in Plaintiff's brief in opposition (the "Opposition") to Defendant's Motion to Dismiss. In the Reply Brief, Defendants will not address any issues not raised by the Opposition, nor will they discuss any facts that are outside the Complaint. Defendants have no motive for requesting these additional pages except to facilitate a clear presentation of the issues and thereby assist the Court in reaching its decision.

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It is important for the Court to understand the scope of the issues that the Reply Brief must address. The Motion to Dismiss seeks dismissal of six of the nine counts in the Complaint, including most of the claims against Beta Pharma and Zhang. Furthermore, the Motion to Dismiss raises more than one legal basis for dismissing each count. For example, it argues that the claims for breach of fiduciary duty should be dismissed both under the economic loss doctrine and for failure to allege legally cognizable fiduciary relationships.

In the Opposition, Plaintiff made a number of legal arguments with respect to each of the six counts at issue. Defendants dispute each of Plaintiff's legal arguments and Plaintiff's application of the law to each count at issue. Defendants therefore need to address each of these arguments and their application to each of these counts. Thus, the Reply Brief requires more space to rebut the arguments than is required in the average reply brief.

For example, Plaintiff made several legal arguments – all of which Defendants dispute – on the application of the economic loss doctrine to his tort claims. Opposition at 5-25. In doing so, he discussed a large number of specific allegations of his Complaint and argued that these allegations defeat the application of the economic loss doctrine to each of his tort claims. Defendants must rebut each of these arguments and discuss the various allegations that Plaintiff characterizes as defeating the application of the economic loss doctrine to his claims. Doing so involves presenting to the Court law and argument on several subjects, such as establishing that Plaintiff's allegations of broken promises and non-disclosures cannot undergird independent tort claims so as to

defeat the economic loss doctrine, and showing that Plaintiff's pleading of a punitive damages remedy for certain claims does not insulate such claims from the economic loss doctrine.

Similarly, Plaintiff argues that he has stated causes of action for breach of fiduciary duty by providing several new characterizations of the fiduciary relationships alleged, i.e., characterizations different from those stated in the Complaint, and thus different from those that Defendants addressed in their original Memorandum of Law. Oppo. at 30-36. This requires Defendants to present to the Court law and argument to show that Plaintiff has not pled a legally cognizable fiduciary relationship between himself and Defendants under these characterizations. Plaintiff likewise presented arguments that require rebuttal in opposition to his claim that he has pleaded fraud with particularity.

Defendants do not provide this explanation in order to argue these issues here, but simply because they have no other way of explaining to the Court that the issues that Plaintiff raises in the Opposition require space beyond the number of pages usually required for a reply brief.¹ Permitting Defendants to file a Reply Brief in excess of the Rule 7(d) limit will facilitate the Court's decision of the

¹ When Defendants stated in the Motion for Permission that the Opposition provided "misleading characterizations" or "mischaracterized the impact of his request for punitive damages," they were merely emphasizing that they dispute Plaintiff's positions and hence need to respond to them in the Reply Brief. They were not asserting that Plaintiff is making anything other than good faith legal arguments.

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 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)