

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AKBAR MOHAMMADI,  
MANOUCHEHR MOHAMMADI,  
NASRIN MOHAMMADI,  
SIMIN MOHAMMADI,

Plaintiffs,

v.

AYATOLLAH SAYID ALI HOSEYNI KHAMENEI, et.  
al.,

Defendants.

Civil Action No. 09-1289 (BAH)

**PLAINTIFFS' UNOPPOSED MOTION TO FILE THIRD AMENDED COMPLAINT**

Plaintiffs, Akbar, Manouchehr, Nasrin, and Simin Mohammadi hereby move this honorable Court to file a Third Amended Complaint through amendment and as grounds therefore would show:

Subsection (a)(2) of Rule 15 of the Federal Rules of Civil Procedure provides that leave to amend shall be freely given when justice requires. "Leave to amend a complaint should be freely given in the absence of undue delay, bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility." See *Richardson v. United States*, 193 F.3d 545, 548-549 (D.C. Cir. 1999) citing *Foman v. Davis*, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962).

In addition, under Rule 15(b)(2), "[a] party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded

issue. But failure to amend does not affect the result of the trial of that issue." Fed.R.Civ.P. 15(b)(2). *See also Brown v R. & R Engineering Co.*, F Supp. 315 (D. Del.1958) reversed on other grounds 264 F.2d 219 (3d Cir.1959); *Hemmer–Miller Dev. Co. v. Hudson Ins. Co.*, 63 S.D. 109, 256 N.W. 798 (1934)."Trial of [an] issue without objection normally is enough to satisfy the Rule 15(b) requirement." *Kirkland v. Dist. of Columbia*, 70 F.3d 629, 633, 315 U.S. App. D.C. 68 (D.C. Cir. 1995). If evidence is introduced without objection or if the non-moving party produced evidence bearing on the issue, consent to amend is present. *Id.* Here, Defendants have not objected and will not object as they have steadfastly and characteristically refused to defend much less participate in any way in this case. *See* Amended Order Granting Plaintiff's Motion for Entry of Default, Clerk's Entry of Default. Exhibit 1.

In accordance with FRCP Rule 15, Plaintiffs hereby file the attached proposed Third Amended Complaint to conform with the supplemental evidence obtained during the trial of this cause on April 4, 2013, which updated and set forth with greater specificity a continuing course of human rights violations by the Defendants up to and including the present. Exhibit 2.

In addition, the Third Amended Complaint conforms to stipulations made at trial that removes the class action aspect of this case, as well as claims for American military servicemen who had a bounty placed on their head by the Defendants. The Third Amended Complaint thus focuses on the material facts and legal vehicles that are now part of this cause.

Defendants in this cause, having been duly served with the two prior complaints, have defaulted and thus service of this Third Amended Complaint would be futile. In addition, the newly supplemented evidence adduced at trial is of the same substantive nature as the facts plead in the Second Amended Complaint. This notwithstanding, should this Court order additional service, this could be done through constructive service, such as publishing it on counsel for

Plaintiff's internet site at [www.freedomwatchusa.org](http://www.freedomwatchusa.org) or another site that is publicly available, such as [www.scribd.com](http://www.scribd.com) which allows the posting of documents on the internet for all viewers to see and download. Defendants could then review the trial transcript which Plaintiffs filed on April 17, 2013 on the court's PACER system if they wish to respond in any way. However, this possibility is non-existent and would be futile, as Defendants have routinely defaulted on all legal actions to which they have been named not only by the instant Plaintiffs, but other plaintiffs in prior cases before other courts. See *Peterson v. Islamic Republic of Iran*, 264 F.Supp.2d 46 (2002) ("Although defendants were served with the two complaints on May 6 and July 17, 2002, defendants failed to file any response to either complaint, and on December 18, 2002, this Court entered defaults against defendants in both cases."); *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 6 (D.D.C. 1998)("This is an action for wrongful death resulting from an act of state-sponsored terrorism. Defendants have not entered an appearance in this matter."). In addition, the Third Amended Complaint is available for review on the court's PACER internet site and system. Thus, additional service is unnecessary.

WHEREFORE, Plaintiffs respectfully request that leave be granted for them to file the attached Third Amended Complaint and that this case proceed to final disposition.

Respectfully submitted,

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