UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRET D. LANDRITH,	)	
SAMUEL K. LIPARI	)	
Plaintiffs,	)	
	)	
vs.	)	**Civil Action No. 12-cv-01916-ABJ**
	)	
Hon. JOHN G. ROBERTS, JR.,	)	
Chief Justice of the United States	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S OPPOSITION TO PLAINTIFFS'
SECOND MOTION FOR LEAVE TO FURTHER AMEND THE COMPLAINT

I. Introduction

Defendant opposes Plaintiffs' Second Motion for Leave to Further Amend their Complaint in this case on the grounds that the amendments proposed are not only frivolous, but also futile. Although not the model of clarity, Plaintiffs' proposed Second Amended Complaint adds the Attorney General Eric Holder as a Defendant, and articulates new claims against Holder as well as the Chief Justice. A cursory review of these claims [ECF No. 17 at 54-64, Counts IV and V], demonstrates that they have nothing to do with the merits of Plaintiffs' case, which is now fully briefed and awaiting decision. ECF Nos. 9, 14, 15 and 16. Instead, the new claims are directed towards what Plaintiffs perceive as misconduct by Defendant's attorneys in defending against Plaintiffs' claims. Accordingly, Defendant urges this Court to deny this motion and to rule on Defendant's dispositive motion and dismiss this case with prejudice. ECF No. 14.

II. New Claims Presented in Proposed Amended Complaint

A. New Claims Against the Attorney General of the United States.

Plaintiffs' proposed Second Amended Complaint seeks to add Attorney General Eric Holder as a defendant to this lawsuit, both in his "personal and official capacity." ECF No. 17-3 at 5. The allegations against him appear at Count V. *Id.* at 56-62. Although their motion for leave to amend appears to focus on the Attorney General's conduct and that of his "employees and agents" in this litigation, [ECF No. 17 at 2 of 4 at ¶¶ 5-6], Plaintiffs' allegations in the proposed Second Amended Complaint alleged:

> warrantless surveillance, pen register captures and wire taps…bad faith warrant based surveillance to cover and attempt to launder earlier warrantless electronic surveillance and wire taps in furtherance of malicious investigations and malicious prosecutions of the plaintiffs for the purpose of depriving them of their property rights without trial or other court proceedings.

ECF No. 17-3 at 56-57. Plaintiffs also allege that the Department of Justice is an "infiltrated enterprise captured by organized crime." *Id.* at 57.

In support of their request to add the Attorney General, Plaintiffs assert he had

> repeated notice of the violations of the constitutional rights of the plaintiffs by DOJ employees and by law enforcement agents in the Federal Bureau of Investigation at the direction of the DOJ since February 14 2009.

Id.

Without providing sufficient information for Defendant or undersigned counsel to ascertain what conduct supports their assertions, Plaintiffs point generally to a number of alleged events. For instance, they reference an unidentified complaint they made that "Kevin Perkins" of the FBI declined to take action for lack of evidence. *Id.* at 57. They also allege obstruction of justice by unidentified DOJ employees and law enforcement agents of:

> The captured agency at the control of organized crime [that] has repeatedly subjected the private civil court actions of the plaintiffs to obstruction of justice through the violations of

> the constitutional rights of the plaintiffs by DOJ employees and by law enforcement agents of the FBI at the directions of the DOJ that included the removal of Attorney General John Ashcroft from office with a lucrative $52 Million Dollar contract 'supervising a small Novation cartel hospital supplier.

Id. at 58. They further allege that:

> With Ashcroft out of the way, the plaintiffs were more directly subjected to the Novation cartel's will through the DOJ to keep them from entering the nationwide market for hospital supplies monopolized by the Novation cartel.

ECF No. 17-3 at 59. They suggest that there is wrongdoing in Missouri and Kansas that allegedly involves the Department of Justice. For instance, they assert that DOJ kept them from entering the nationwide market for hospital supplies with the assistance of:

> the former Kansas Attorney Discipline official Scott J. Bloch's capture of the DOJ Office of Professional Responsibility, the replacement of the Western District of Missouri US Attorney Todd Graves (exposed by the plaintiffs' April 9, 2007 press release Former MO US Attorney Todd Graves the Ninth Attorney Target by Alberto Gonzales . . .) with the illegal US PATRIOT Act appointment of the Kansas attorney Bradley Schlozman, then when the plaintiffs exposure of the unlawful firing was widely covered, the cartel caused John Wood and then Mary Elizabeth Phillips to be installed as US Attorney for the purpose of obstructing the plaintiffs' antitrust investigation and court proceedings[.]

Id. Plaintiffs further assert that Senator Claire McCaskille and Beth Phillips were involved in stopping LIPARIs state claims, and Eric S. Melgren with State of Kansas officials were involved in extra-judicially obstructing justice in the plaintiff LIPARI's civil antitrust litigation against the Novation cartel. *Id.* at 61. It is unclear as to how Attorney General Eric Holder was involved in this matter. What is clear is that Plaintiffs blame the alleged continued surveillance of them to be under the auspices of the Department of Justice:

> is conducted for the purpose of obstructing justice through extrinsic fraud by depriving the plaintiff Lipari and his business resources to enter the market for hospital supplies, and to deprive the plaintiffs of an unbiased tribunal for the purpose of depriving them of Due Process and of their property rights.

Id. at 62-63. In addition, Plaintiffs assert that:

> Eric Holder through extrinsic fraud related to his continuing unlawful conduct against the plaintiffs, deprived the US and Agencies and Departments [therein] of the government's right to have the officials of these departments and agencies transact their official business honestly and impartially free from corruption, fraud, improper and undue influence dishonesty, etc.

Id. at 63. Moreover, they want to be free from Eric Holder's violation of their rights in connection with his alleged "censorship of Google and electronic communications" and "unconstitutional enforcement of statutes that prevents them from knowing of federal database reporting that impairs their ability to earn a living…" *Id.* at 64.

2. <u>New Claims Against the Chief Justice.</u>

The new claims in Plaintiffs' Proposed Amended Complaint are found at ECF No. 17-3 at 54-55 and are similar to those already before the Court in Defendant's Renewed Motion to Dismiss. ECF No. 14. Plaintiffs alleges in new Count IV [*id.* at on 54-55], that the Chief Justice Roberts has:

> knowingly participated in using government attorneys and law enforcement personnel to deprive the plaintiffs of Fifth Amendment Due Process Clause Of United States constitution against discriminatory prosecution . . and investigate the defendants [sic] for the purpose of depriving them of constitutional property rights.

ECF 17 at 54-55. It also asserts that the Chief Justice has:

> employed federal judges and Department of Justice attorneys breaking the model rules of attorney ethical conduct to obstruct justice and to interfere with the plaintiffs' constitutional rights while at the same time discriminatingly depriving the plaintiff LANDRITH of his right to vindicate his name and present evidence that he was wrongfully disbarred [and] depriving the plaintiff LIPARI of his right to obtain legal counsel and representation in state and federal courts in order to enter the nationwide market for hospital supplies free of intimidation and coercion of Chief Justice hon. JOHN G. ROBERTS, JR.'s agents and employees working to keep that market unlawfully monopolized by the Novation cartel.

Id. at 55.

III. Legal Standard for Amending Pleadings

Because Plaintiffs have amended their complaint once as a matter of right, they must seek amendment under Fed R. Civ, P. 15(a)(2). Resolution of a motion to amend is committed to the sound discretion of the district court. See *Foman v. Davis*, 371 U.S. 178, 182 (1962). The D.C. Circuit has held that denying leave to amend is not an abuse of discretion in the face of sufficiently compelling reasons, such as "undue delay, bad faith, or dilatory motive…repeated failure to cure deficiencies by [previous] amendment [or] futility of amendment." *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996). The Supreme Court has made clear that the most important factor is whether the nonmoving party will be prejudiced if the moving party is permitted to amend his complaint. *Zenith Radio Corp. v. Hazeltine Research, Inc*., 401 U.S. 321, 332 (1971).

Courts have deemed motions to amend prejudicial where "the amendment…is proposed late enough so that the opponent would be required to engage in significant new preparation." 6 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1487 (2000). Thus, "when the motion to amend is filed late in the litigation, justice requires the Court to determine whether there is prejudice to the defendants." *Hollinger—Haye v. Harrison Western Franki-Denys*, 130 F.R.D. 1 (D.D.C.1990). The D.C. Circuit has also held that the denial of a motion to amend is fully warranted when a significant amount of time has passed and the movant has had plenty of opportunity to raise the issues. *Williamsburg Wax Museum, Inc. V. Historical Figures, Inc.,* 810 F.2d 243, 247 (D.C. Cir. 1987).

IV. ARGUMENT

Plaintiffs argue that under Fed. R. Civ. 15, the two new Counts proposed in their Second Amended Complaint should be permitted because leave is generally granted to amend a complaint. ECF No. 17 at 2. However, Plaintiffs do not dispute that "leave to amend a

complaint is entrusted to the sound discretion of the district court," and it should be freely given "**unless there is a good reason, such as futility, to the contrary**." ECF No 17 at 3 (emphasis added). Here, there can be no dispute that the amendment is futile. Indeed, a cursory review of Plaintiffs' proposed amendments show that they have no merit and should be rejected. The allegations against the Attorney General are outlandish. Plaintiffs point to no jurisdictional basis for the claims that they make, except to aver that criminal laws have been violated. *See e.g.,* ECF No. 17-3 at 56-57, 63. However, as set forth below, under settled case law, there is no private cause of action permitted based on a defendant's alleged violation of criminal statutes. *See Prunte v. Universal Music Group*, 484 F. Supp. 2d 32, 42 (D.D.C. 2007) (noting that "the Supreme Court has refused to imply a private right of action in 'a bare criminal statute'"). Accordingly, Plaintiffs' new allegations against the Attorney General are futile.

Moreover, although Plaintiffs argue vigorously that the Court has jurisdiction over the Chief Justice's ministerial acts to control the acts of federal judges and that his counsel has failed to recognize the case law they cite, that does not remedy the underlying problem with their case. They specifically allege violations of 18 U.S.C. §§ 241, 242 and 245 – all criminal statutes. ECF No. 17-3 (Proposed Second Amended Complaint) at ¶12. As noted above, there is no private cause of action permitted based on a defendant's alleged violation of criminal statutes. *See Prunte v. Universal Music Group*, 484 F. Supp. 2d at 42; *see also Abou– Hussein v. Gates*, 657 F. Supp. 2d 77, 81 (D.D.C. 2009) (Plaintiff's claims of fraud or false statements under 18 U.S.C. § 1001 and conspiracy under 18 U.S.C. § 241 are barred because these criminal statutes do not expressly create a private right of action); *aff'd,* 2010 WL 2574084 (D.C. Cir. June 11, 2010); *cert. denied*, 131 S.Ct. 1055 (2011); *Fuller v. Unknown Officials From the Justice Department*, 2010 WL 1005798 (D.D.C. March 16, 2010) (Petitioner cannot bring a civil action on the basis

of defendants' alleged violation of criminal statutes). *Fuller* involved allegations that Justice Department attorneys permitted witnesses to commit perjury and submit false declarations. Thus, based on Plaintiffs' own express basis for relief which relies on certain criminal statutes [*see* Second Amended Complaint at ¶ 12], there can be no jurisdictional basis under the law for Plaintiffs' cause of action.

Moreover, Plaintiffs cannot pursue injunctive relief against the Chief Justice, even in his ministerial duties, because they can show no direct harm to themselves based on any action that he has taken. As discussed in Defendant's reply to Plaintiffs' Opposition to Defendant Renewed Motion to Dismiss [ECF No. 16 at 5], Plaintiffs have failed to satisfy the three-part test for standing set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *See*, *e.g.*, *Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011) (Past harms are insufficient when a plaintiff seeks prospective declaratory or injunctive relief).

Indeed, Plaintiffs have yet to establish a jurisdictional basis for their lawsuit, except to point to a case involving a federal judge in the Fifth Circuit, who was successful in this District Court in obtaining some relief from the imposition of discipline on him by a Fifth Circuit Judicial Conference review committee. *See McBryde v. Committee to Rev. Cir. Council Conduct,* 83 F.Supp.2d 135 (D.D.C. 1999). That is simply not the case here. Unlike the Plaintiffs here, Judge McBryde did have standing to sue; he could trace the harm that he encountered directly to the action of the Defendants when he was disciplined as a federal judge under an authorizing statute. Unfortunately, Plaintiffs have failed to trace the harms they allegedly suffered by the hands of the federal judiciary to an action of the Chief Justice. There is simply no waiver of sovereign immunity for their cause of action, and even if there were, they lack standing to proceed with the claims they make. No number of proposed amendments will

provide Plaintiffs with the underlying authority to enjoin the Chief Justice, or his attorneys, for acts they allegedly suffered from decisions of lower federal courts.

As noted in Defendant's dispositive motions, Plaintiffs have failed to state a claim upon which relief can be granted under Rule 12(b)(6). Because Plaintiffs have failed to plead "enough facts to state a claim for relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), their complaint should be dismissed. *See also Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *Martin v. Arc of Dist. of Columbia*, 541 F. Supp. 2d 77, 81 (D.D.C. 2008) (quoting *Twombly*, 550 U.S. at 555). The facts alleged in the proposed Second Amended Complaint are still not "enough to raise a right to relief above the speculative level," and are insufficient "to state a claim for relief that is plausible on its face." *Id.* Accordingly, Plaintiffs' motion to amend should be denied and Defendant's dispositive motion granted.

Conclusion

For the foregoing reasons, it is respectfully requested that the Court deny Plaintiffs' Motion for Leave to Amend their First Amended Complaint and resolve the pending dispositive motion in Defendant's favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing opposition was transmitted to Plaintiffs by first class mail, postage pre-paid, this 21st day of June, 2013, to:

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Chief Justice of the United States,	)	
	)	
Defendant.	)	
	)	

ORDER

Upon consideration of Plaintiffs' Motion for Leave to Amend their First Amended Complaint, the opposition thereto, and because the amendment would be futile, it is this _____ day of _____, 2013,

ORDERED, that said motion is denied.

_____
UNITED STATES DISTRICT JUDGE

Copies to Plaintiffs, *pro se*:

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