UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

TROPICAL CHILL CORP., ET AL., Plaintiffs, v. HON. PEDRO R. PIERLUISI URRUTIA, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO, ET AL., Defendants.	**Civil No. 21-1411 (RAM-MEL)**

Motion to Hold in Abeyance Defendants' Motion to Dismiss Supplemental Pleading Until After Resolution of Plaintiffs' Motion at ECF No. 90

To the Hon. Raúl M. Arias-Marxuach, U.S. Chief District Judge:

The plaintiffs, Tropical Chill Corp., Eliza Llenza, Yasmin Vega, and Rene Matos (collectively, "Plaintiffs"), respectfully move this Court to hold in abeyance the resolution of Defendants' Motion to Dismiss Supplemental Pleading at ECF No. 78 (MTDS) until after it rules on the motion for leave to file a second supplemental pleading and other remedies at ECF No. 90.

On December 22, 2021, two days after the governor of Puerto Rico issued Executive Order No. 2021-081 (EO 081), Plaintiffs filed a motion for leave to file a second supplemental pleading. ECF No. 90. It also requested that this Court deem moot Defendants' MTDS, or alternatively, grant Plaintiffs an extension of time until today to oppose the MTDS, *id.* at 4,

and an order limiting Defendants' response only as to the first and potentially the second supplemental pleading, *id.* at 5.

Defendants then filed a notice of intent and motion for extension of time to oppose Plaintiffs' motion for leave to file the second pleading. They argued that "even though "courts customarily have treated requests to supplement under Rule 15(d) liberally…, "[t]his does not mean, however, that motions for supplementation should be granted automatically." ECF No. 93 at 2 (cleaned-up). Defendants also requested that this Court deny Plaintiffs' request to deem moot the MTDS, arguing that "Plaintiffs chose not to amend the Complaint, but to supplement it with additional facts." ECF No. 93 at 2. Because the "Amended Complaint is still before the Court as the operative Complaint," they reasoned, "Defendants' Motion to Dismiss is still pending for adjudication." *Id*.

But Plaintiffs never moved this Court to deny as moot the Motion to Dismiss the Amended Complaint (MTD). Indeed, it is because the MTD—which has been fully briefed at ECF Nos. 49 & 59—is still pending adjudication that Plaintiffs requested that Defendants' optional response be limited to the content of the supplemental pleadings. Recall that a Rule 15(d) "[a] supplemental pleading . . . [is] less disruptive at this phase in the litigation because an amendment triggers various obligations and deadlines on the part of the defendant[s]." ECF No. 65 at 3 (quoting *Equal Empl. Opportunity Comm'n. v. New Mexico, Dept. of Corrections*, CV 15-879, 2017 WL 6001752, at *7 (D.N.M. Dec. 4, 2017)). That is precisely why Plaintiffs moved to supplement under Rule 15(d) and not to amend under Rule 15(a). And this Court agreed: "Upon reconsideration, the Court will not require an Amended Complaint and will

allow the supplemental pleading under Fed. R. Civ. P. 15(d). Defendant shall plead or otherwise defend *as to the supplemental pleading* . . . ." ECF No. 74 (emphasis added). But Defendants ignored the procedural differences between a second amended complaint and a supplemental pleading. In doing so, they not only ignored this Court's order, but also unnecessarily complicated the resolution of their pending—and fully briefed—MTD. *Cf. Brodheim v. Cry*, 2:02-CV-0573, 2010 WL 3943558, at *3 (E.D. Cal. Oct. 7, 2010) ("Authorizing the filing of only a supplemental pleading will cause limited delay in this action, and minimal costs, and cannot reasonably be construed as prejudicial to defendants.").

Defendants' bizarre maneuver ultimately runs headlong into the notion of judicial economy and costs Plaintiffs both time and expenses. *See generally, e.g.*, Arturo V. Bauermeister, *The 2015 Amendment to Federal Rule of Civil Procedure 1 Has Some Bite*, 65 Fed. Law. 4, 68 (September 2018) (arguing that "[e]ffective advocacy is consistent with . . . cooperative and proportional use of procedure . . . [and] that, in this era of congested dockets, Rule 1's new duty on the parties must take an added force. And lower courts have required the parties to live up to the end of their bargain . . . .") (cleaned up). The MTDS, then, is not an appropriate response to the first supplemental pleading. It even neglects to address "the short and predictable tendered supplemental pleading." ECF No. 65 at 4. Recall that the MTD is still pending. So instead of replying to Plaintiffs' opposition to the MTD—as they had to by November 24, ECF No. 63—and addressing head-on the plausibility *vel non* of the supplemental pleading's fact-based allegations, which again contained no new legal theories—the MTDS advanced no new defenses in light of the supplemented facts related to

EO 75. In other words, the Defendants are trying to take two bites at the apple, or perhaps even the same bite twice.

The same reasoning and conclusion should follow as to the tendered second supplemental pleading—which was *forcibly* triggered by Defendants' issuance of yet another executive order, EO No. 081—if this Court grants Plaintiffs' motion for leave to file it. That is, Defendants' response should be limited only to the content of the first and second supplemental pleadings. *See U.S. v. Johnston, CIV. 2:92CV89*, 1994 WL 511717, at *4 (W.D.N.C. May 31, 1994) (limiting defendants' "pleadings or responses" to the "limited issue" raised by the supplemental pleadings).

But because this Court has yet to rule on the motion to leave to file the second supplemental pleading, ECF No. 90—which included a request to deem moot Defendants' MTDS, an alternative motion for extension of time to oppose it, which would expire today, and a request to limit Defendants' response to the supplemental pleadings—and considering that Defendants have until January 5 to oppose it, ECF No. 96, Plaintiffs respectfully request that the MTDS be held in abeyance until after this Court rules on the motion at ECF No. 90. This Court, after all, "enjoy[s] broad discretion in managing . . . [its] docket[ ]," *Boston Gas Co. v. Cent. Indem. Co.*, 708 F.3d 254, 269 (1st Cir. 2013), and this suggested course of action would no doubt further Rule 1's mandate.

Plaintiffs submit that granting their requests at ECF No. 90—which would allow Plaintiffs to file a second supplemental pleading, deny the MTDS without prejudice, and limit Defendants' response only as to the first and second supplemental pleadings—would better

serve the purpose of judicial economy. Alternatively, if the MTDS is not denied without prejudice but the second supplemental pleading is authorized and the defendants file a third motion to dismiss (as they probably will), this Court should allow Plaintiffs to file an omnibus opposition to both motions to dismiss.

For the reasons stated, Plaintiffs respectfully request that this Court hold the MTDS in abeyance until it rules on the multiple and alternative remedies requested here and in Plaintiffs' motion at ECF No. 90.

Dated: December 31, 2021 Respectfully submitted,

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