UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT O'SHEA, CHAIRMAN OF THE WARD 6 DEMOCRATIC COMMITTEE, ET AL., Plaintiffs, v. BOSTON CITY COUNCIL, Defendant.	)	Civil Action No. 1:22-cv-12048-PBS

MOTION FOR CLARIFICATION OF SCHEDULING ORDER DEADLINES

The Defendant, the Boston City Council (the "Council"), moves to clarify that the February 27, 2023 deadline in the parties' Joint Statement (Dkt. No. 30; Jan. 20, 2023), as adopted and modified by the Court's Electronic Order (Dkt. No. 37, Jan. 23, 2023), requires the Plaintiffs to file a motion seeking the Court's leave to amend their Complaint by that date. In support of this motion, the Council states as follows:

1. On November 2, 2022, Plaintiffs filed their original civil complaint in the Superior Court, Suffolk County, Commonwealth of Massachusetts. *O'Shea, et al. v. Boston City Council*, No. 2284CV2490 (Super. Ct. Mass. filed Nov. 2, 2022) (Dkt. No. 1, Ex. A).

2. On November 21, 2022, prior to the Council's answer, Plaintiffs filed their First Amended Complaint as of right, pursuant to Mass. R. Civ. P. 15(a) (Dkt. No. 1, Ex. A).

3. On December 12, 2022, the case was removed to the United States District Court for the District of Massachusetts (Dkt. No. 1).

4. The parties filed their Joint Statement on January 20, 2023. At the parties' Rule 16 conference on January 23, Plaintiffs asked to include a date by which they could seek to amend their pleadings. The Court agreed, set that date as February 27, 2023, and in response to

an inquiry from Defendants' counsel, clarified that Plaintiffs would need to move to amend their complaint and could not just file as a matter of right.

5. This procedure is consistent with case law on this issue: when a plaintiff amends their complaint as a matter of course in state court, after which the case is removed to federal court, the plaintiff may not further amend the complaint without the consent of the defendant or leave of court. *Mullane v. Portfolio Media, Inc.*, No. 19-11496-PBS, 2019 WL 12316202, at *7 (D. Mass. Nov. 19, 2019) (Dein, U.S.M.J.), *adopted by Mullane v. Portfolio Media, Inc.*, No 19-11496-PBS, 2020 WL 1932717, at *1 n.1 (D. Mass. Feb. 28, 2020).

6. Here, where Plaintiffs amended their Complaint in state court, and the Council does not consent to further amendments, Plaintiffs must seek leave of court to file a second amended complaint. Fed. R. Civ. P. 15(a)(2).

7. The Electronic Clerk's Notes docketed on January 23, 2023, adopts the Joint Statement and modifies it to require that "[a]ny Amendments" be filed by February 27, 2023.

8. After that order was docketed, Defendant's counsel reached out to Plaintiffs' counsel to confirm the parties' understanding that this deadline was for a motion to amend, not an amended complaint. Plaintiffs' counsel responded that they "will be filing an Amended Complaint on or before February 27th." Affidavit of Christina Marshall, ¶ 2.

9. Given this unanticipated and apparent disagreement between the parties regarding the February 27 deadline, the Council seeks clarification from this Court in advance of the deadline.

WHEREFORE, the Council respectfully requests that the Court amend its Electronic Order to clarify that Plaintiffs are required to file a motion seeking the Court's leave to file a Second Amended Complaint by February 27, 2023.

By its attorneys,

/s/ Lon F. Povich

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Dated: February 17, 2023

Rule 7.1(a)(2) Certification

I certify that counsel have conferred and have attempted in good faith to resolve or narrow the issues raised in this motion.

/s/ Christina S. Marshall
Christina S. Marshall

Certificate of Service

I hereby certify that a true and accurate copy of this document was filed through the Electronic Case Filing system, and will be served upon the attorney of record for each party registered to receive electronic service on this 17th day of February 2023.

/s/ Christina S. Marshall
Christina S. Marshall

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT O'SHEA, CHAIRMAN OF THE WARD 6 DEMOCRATIC COMMITTEE, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 1:22-cv-12048-PBS
BOSTON CITY COUNCIL,	)	
Defendants.	)	

AFFIDAVIT OF CHRISTINA S. MARSHALL

I, Christina S. Marshall, under oath depose and state as follows:

1. I am an attorney duly admitted to practice in this Court. I am a partner at the law firm of Anderson & Kreiger LLP and I am co-counsel for the Boston City Council (the "Council") in the above captioned matter. I have personal knowledge of the matters stated in this Affidavit. I submit this affidavit in support of the Boston City Council's Motion for Clarification of Scheduling Order Deadlines.

2. After the Court's order of January 23, 2023 was issued, I reached out to the plaintiffs' counsel to clarify the parties' understanding of the February 27, 2023 deadline. The Plaintiffs responded by stating that they "will be filing an Amended Complaint on or before February 27th," not a motion to amend the complaint. At the parties' Local Rule 7.1(a)(2) conference, plaintiffs' counsel confirmed that this was their understanding of the deadline. A true and accurate copy of this email chain is attached hereto as **Exhibit A**.

Signed under the pains and penalties of perjury this 16th day of February, 2023.

/s/ Christina S. Marshall
Christina S. Marshall

EXHIBIT A

Christina S. Marshall

From: Glen Hannington <glenhannington@aol.com>
Sent: Monday, January 30, 2023 8:09 AM
To: Lon F. Povich; Christina S. Marshall
Cc: Paul Kominers; Miller, Jennifer Grace; Dianna McLain; Frederick Dashiell; Paul Gannon
Subject: Re: O'Shea et al v. Boston City Council

We will be filing an Amended Complaint on or before February 27th, consistent what was relayed to the Judge and discussed.

Very truly yours,
Glen Hannington Esq.
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On Friday, January 27, 2023 at 05:19:35 PM EST, Christina S. Marshall <cmarshall@andersonkreiger.com> wrote:

Glen,

Thanks and understood on the disclosure deadline. What was stated specifically by Judge Saris in the Court hearing was that February 27 would be the deadline to move to amend. Can I take your email to mean that you do not object to reaching out to the clerk on this issue? Alternatively we'd be content with an email confirmation from you all that you intend to move to amend.

Best,

Christina

From: glenhannington@aol.com <glenhannington@aol.com>
Sent: Friday, January 27, 2023 4:49 PM
To: Lon F. Povich <lpovich@andersonkreiger.com>; Christina S. Marshall <cmarshall@andersonkreiger.com>
Cc: Paul Kominers <pkominers@andersonkreiger.com>; Miller, Jennifer Grace <jmiller@hembar.com>; 'Dianna McLain' <dmclain@paulgannonlaw.com>; Frederick Dashiell <fred.dashiell@gmail.com>; Paul Gannon <pgannon@paulgannonlaw.com>
Subject: Re: O'Shea et al v. Boston City Council

Counsel, see attached. Also, we stand by what was stated in the Court hearing and memorialized by the Court and we do not agree to any extension of disclosures prior to the hearing.

Very truly yours,
Glen Hannington Esq.
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On Thursday, January 26, 2023 at 03:13:12 PM EST, Christina S. Marshall <cmarshall@andersonkreiger.com> wrote:

Counsel,

Following up on Monday's status conference, we noticed that the scheduling orders entered by the Court yesterday had two issues. First, the February 27 deadline should be for filing any motion to amend, not an amended complaint (as originally proposed by the Plaintiffs and discussed on Monday). Second, we had also discussed a deadline of 1 week prior to the preliminary injunction hearing to disclose any witnesses that wasn't included in yesterday's orders.

Do you have any objection to us reaching out to the court to fix those points on the docket? And on the second point, what are your thoughts on extending the disclosure deadline out to 2 weeks prior to the hearing?

Thanks.

Christina

ANDERSON KREIGER

Christina Marshall (she/her/hers)

T. 617.621.6583

Anderson & Kreiger LLP | 50 Milk Street, 21st Floor, Boston MA 02109

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