

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CANANDAIGUA WINE CO.,

Plaintiff,

v.

EDWIN MOLDAUER,

Defendant.

1:02-CV-06599 OWW DLB

MEMORANDUM DECISION RE
PLAINTIFF'S MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. PRO. 41(a)(2) (DOC.
88)

I. INTRODUCTION

Before the court for decision is Plaintiff Canandaigua Wine Company's motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). Doc. 87. Defendant opposes dismissal. Doc. 96.

II. BACKGROUND

It is undisputed that Plaintiff and its parent company, Constellation Brands, are involved in the grape business and produce wine and non-alcoholic grape juice concentrate. In September 2000, Mr. Moldauer began working as a financial analyst at the Mission Bell Winery owned by Plaintiff. In connection with his employment at Plaintiff's facility, Plaintiff informed the Immigration and Naturalization Service ("INS") that it was Defendant's employer. In early 2002, Defendant was terminated

1 for, according to Plaintiff, his "continuing pattern of
2 insubordination." Doc. 88 at 1.

3 It is undisputed that two months after his dismissal, Mr.
4 Moldauer posted accusations of accounting fraud and retaliatory
5 termination in a series of messages on an electronic "bulletin
6 board" hosted by Yahoo!, Inc., that covers Plaintiff's parent
7 company, Constellation Brands. For example, on December 5, 2002,
8 Mr. Moldauer posted the following message:

9 Re: cooking the books???

10 I hear that their west coast operation is cooking the
11 books according to a former analyst that was fired
after questioning certain practices.

12 See Doc. 88 at 2.

13 In early December 2002, someone anonymously sent Plaintiff's
14 confidential price and customer lists to Plaintiff's principal
15 competitor. Evidence gathered during the course of an
16 investigation by the Madera County Sheriff's Department ("MCSD"),
17 including a video-surveillance tape showing Mr. Moldauer at a
18 Kinko's copy shop in Fresno at the time the price and customer
19 lists were faxed from that shop to Plaintiff's competitors,
20 confirmed that Mr. Moldauer was responsible for the anonymous
21 dissemination. Based on evidence seized from Mr. Moldauer's
22 apartment, and other information gathered by MCSD, a criminal
23 complaint was filed by the Madera County District Attorney's
24 office on December 31, 2002, and a warrant issued for Mr.
25 Moldauer's arrest. However, Mr. Moldauer left the country on
26 December 11, 2002. The criminal complaint remains pending.

27 On December 19, 2002, Plaintiff filed this lawsuit against
28 Mr. Moldauer, asserting claims for theft and dissemination of

1 trade secrets, as well as for damages caused by the defamatory
2 internet postings. Based on Plaintiff's evidentiary showing, a
3 temporary restraining order issued on the same day the lawsuit
4 was filed: (1) prohibiting further dissemination of Plaintiff's
5 confidential business information; (2) directing the United
6 States Marshall to seize Mr. Moldauer's computers; and (3)
7 directing Mr. Moldauer to disclose the details of all trade
8 secret disclosures and to respond to certain specified discovery
9 propounded by Plaintiff. Doc. 10.

10 To date, Mr. Moldauer has refused to provide any of the
11 information required by the December 19, 2002 order, nor has he
12 responded any subsequent discovery requests propounded by
13 Plaintiff. Instead, Mr. Moldauer has invoked the Fifth
14 Amendment.¹

15 Although Plaintiff maintains that "Mr. Moldauer's
16 responsibility for the tortious and criminal conduct alleged in
17 the Complaint is beyond serious dispute," Plaintiff believes it
18 is "now obvious that no useful purpose will be served by further
19 prosecution of this lawsuit [because] Mr. Moldauer will continue
20 to ignore plaintiff's rights, this Court's directives, and
21 applicable rules of procedure[]." Doc. 88 at 4. Moreover,
22 "papers filed in connection with Mr. Weisberg's recent motion to
23 withdraw confirm that Mr. Moldauer was unwilling and/or unable to
24

25
26 ¹ Plaintiff correctly points out that adverse inferences
27 may be drawn in a civil case from a person's invocation of the
28 Fifth Amendment. *Baxter v. Palmigiano*, 425 U.S. 308, 318-19
(1976); *Keating v. Office of Thrift*, 45 F.3d 322, 326 (9th Cir.
1995).

1 pay his legal fees." *Id.* Plaintiff questions "the odds that
2 plaintiff would ever see a single dime of any judgment entered
3 against Mr. Moldauer in this case." *Id.*

4 Plaintiff endeavored to obtain a stipulation of dismissal
5 regarding this lawsuit, but not the criminal complaint.

6 Defendant rejected Plaintiff's proposal, stating in a letter:

7 I read the contents of FRCP 41 made available to me.
8 The Rule generally requires that a Judge approve a
9 dismissal. Given the Judge's recent interest in
"getting to the bottom" of the dispute, it appears to
me that the Judge should be the person who decides upon
the fate of this action.

10 ***

11 Accordingly, I do not believe that a stipulated
12 dismissal is appropriate ...

13 Doc. 88, Ex. B.

14 Defendant does not dispute any of the background facts set
15 forth above. Instead, he provides an alternative explanation for
16 his termination, asserting that his employment relationship with
17 Plaintiff soured when he reported accounting irregularities in
18 Plaintiff's concentrate business that distort the allocation of
19 costs between wine and concentrate, resulting in over-stated
20 income and/or understated inventory. Defendant asserts that the
21 Constellation Group then "set Defendant up for dismissal" as
22 follows:

23 An inquiry by an internal team from New York found no
24 irregularity. The Constellation Group claimed a right
25 to terminate Defendant without cause, but delivered a
'Final warning'. Defendant did not violate that final
26 warning, but Plaintiff told the INS that the employment
had been terminated. No company in the Constellation
Group gave a final notice of termination.

27 Doc. 96 at 2. Defendant further, and somewhat confusingly,
28 recounts a number of other, related facts:

1 As his work visa lapsed upon dismissal, Defendant left
2 the United States. Soon after, the Constellation Group
3 closed its concentrate facility in California, at a
4 cost of up to \$50,000,000 and 52 employment places.
5 The closure corroborates Defendant's position.
(Recently the Constellation Group admitted an error in
accounting in Australia, relating to inventory. This
'error' resembles the irregularity the Defendant
detected.)

6 Plaintiff decided to pay a termination bonus to
7 Defendant. Given Plaintiff's position that (a) it had
8 a right to terminate him without cause, and (b) it had
9 cause to terminate him, the bonus is a mystery. The
10 bonus was part of a settlement. Plaintiff signed the
11 Agreement, although it was not the employer. The
Agreement focused on potential claims by Defendant
under age or such discrimination. There was no mention
of a claim under the Sarbanes-Oxley Act. The bonus is
not a mystery if the aim of the settlement was to
stifle any inquiry about the accounting irregularities.

12 Subsequently Defendant found out about his rights under
13 the Sarbanes-Oxley Act. His application through the
14 Department of Labor was opposed by the Constellation
15 Group on limitation grounds. Subsequently he commenced
16 arbitration with the American Arbitration Association
17 pursuant to the employment Agreement, but the
18 Constellation Group refused to participate in good
19 faith, and involved the Supreme Court of the State of
20 New York, contrary to settled law. Defendant then
commenced litigation in New Zealand under the
California tort of dismissal contrary to public policy.
Plaintiff protested jurisdiction in the trial court,
and then on appeal disavowed its appearance.
Plaintiff's claims about his dismissal have never been
adjudicated on the merits, because the Constellation
Group always invokes procedural defen[s]es.

21 *Id.* at 2-3.

22 Defendant also asserts that the procedural history of this
23 case "shows delay by Plaintiff," asserting that:

24 Defendant was kept in the dark about the progress of
25 this action. Initially Defendant thought this action
26 was related to the deposition that Plaintiff was taking
against a friend. At the time that he was persuaded to
authorize Jacob Weisberg Esq. to accept service, he was
not aware of the nature of this action.

27 The action has drifted. Mr. Weisberg did not keep
28 [Defendant] properly informed of the status. There
seemed to be regular continuances by agreement between

1 counsel. Mr. Weisberg raised the Fifth Amendment
2 defense. The effect seemed to be to stall the case.
3 Eventually the court resolved to bring the action for a
4 trial. Defendant was expecting to receive evidence and
5 documents from Plaintiff about the alleged trade
6 secrets, and about the losses that it had incurred.
7 None of this has been provided. In particular, there
8 is no accounting evidence to show the loss of income or
9 profit.

10 When trial was imminent. Mr. Weisberg sought leave to
11 be excused from the case. Leave was granted.
12 Defendant has had trouble engaging replacement counsel.

13 Id. at 3-4.

14 III. DISCUSSION

15 Plaintiff moves for dismissal pursuant to 41(a)(2), arguing
16 that "[t]axpayers here and abroad have already spent staggering
17 sums indulging Mr. Moldauer's appetite for litigation. In a time
18 of scarcity, when so many legitimate and pressing public needs
19 cannot be met, plaintiff cannot fairly ask anything further from
20 this Court, or from taxpayers, to pursue a victory that will only
21 be pyrrhic." Doc. 88 at 6. Defendant, through his recently-
22 retained attorney, Gregory Thwaite, rejoins that dismissal should
23 not be permitted because Defendant should be afforded an
24 opportunity to respond to Plaintiff's serious allegations. Doc.
25 96 at 1. Alternatively, if dismissal is allowed, Defendant
26 demands that "conditions should be imposed for costs and for
27 arbitration." Id.

28 Rule 41(a)(2) allows a plaintiff, with the approval of the
court, to dismiss an action without prejudice at any time "upon
such terms and conditions as the court deems proper...." A
motion for voluntary dismissal under Rule 41(a)(2) is addressed
to the district court's sound discretion. *Smith v. Lenches*, 263

1 F.3d 972, 975 (9th Cir. 2001); see also *United States v. Berg*,
2 190 F.R.D. 539, 543 (E.D. Cal. 1999).²

3 A motion for voluntary dismissal should be granted unless
4 the defendant shows it will suffer some plain legal prejudice as
5 a result. *Smith*, 263 F.3d at 975. Plain legal prejudice may be
6 shown where actual legal rights are threatened or where monetary
7 or other burdens appear to be extreme or unreasonable. *Berg*,
8 190 F.R.D. at 543. Factors to consider in determining legal
9 prejudice are:

10 (1) The defendant's effort and expense involved in
11 preparing for trial;

12 (2) Excessive delay and lack of diligence on the part
13 of the plaintiff in prosecuting the action;

14 (3) Insufficient explanation of the need to take a
15 dismissal; and

16 (4) The fact that summary judgment has been filed by
17 the defendant.

18 *Id.* "Plain legal prejudice does not occur where the defendant
19 merely faces the threat of a second lawsuit or a tactical
20 disadvantage." *Id.* "The suit may be dismissed with or without
21 prejudice, and the dismissal may be conditioned on terms that are

22 ² As a threshold matter, Defendant cites a number of
23 cases in support of his objection to voluntary dismissal that
24 concern Federal Rule of Civil Procedure 41(a)(1)(A), which
25 provides that a Plaintiff may voluntarily dismiss a lawsuit as a
26 matter of right either before the opposing party serves either an
27 answer or a motion for summary judgment or by stipulation of all
28 parties. These cases, e.g., *Safeguard Business Systems, Inc. v.*
Hoefel, 907 F.3d 861 (8th Cir. 1999); *Progressive Steel Workers*
Union v. Intern. Harvester Corp., 70 F.R.D. 691 (N.D. Ill. 1976),
which stand for the proposition that dismissal as a matter of
right under Rule 41(a)(1) is not appropriate after the very
earliest stages of a litigation, are not relevant to the present
motion for dismissal under Rule 41(a)(2).

1 proper or necessary to avoid prejudice to the defendant. *Id.*
2 The final factor is not relevant here, as Defendant has not moved
3 for summary judgment.
4

5 1. Defendant's effort and expense involved in
6 preparing for trial.

7 Defendant asserts that he has incurred expenses in preparing
8 to defend against the libel claim in this case. Defendant does
9 not point to any specific expenses incurred in connection with
10 this case. Rather, he asserts that such expenses should
11 "include[] the proceedings in the Department of Labor, the
12 arbitration, and in New Zealand." Doc. 96 at 6. Defendant filed
13 a complaint under the Sarbanes-Oxley Act, 18 U.S.C. § 1514A,
14 with the Department of Labor ("DOL") on April 24, 2003, alleging
15 that Plaintiff terminated him "in retaliation for his disclosure
16 to management of various accounting irregularities." Doc. 98,
17 Ex. K. DOL denied his claim as untimely, *id.*, which denial was
18 affirmed by an Administrative Law Judge ("ALJ"), *id.* at Ex. L,
19 and the Administrative Review Board, *id.* at Ex. M.

20 On June 26, 2008, Defendant filed a second complaint with
21 DOL, alleging, among other things, that Plaintiff's election to
22 proceed to trial in this federal civil litigation violated the
23 Sarbanes-Oxley Act. *Id.* at Ex. N. An ALJ issued an order to
24 show cause why this second complaint should not be dismissed on
25 the grounds that (1) it was untimely filed and (2) that it fails
26 to state a claim upon which relief can be granted under the
27 Sarbanes-Oxley Act. *Id.* at Ex. O. After being granted an
28 extension in response to Mr. Moldauer's request for a stay, *id.*

1 at Ex. P, Mr. Moldauer filed no response, *id.* at Q. The ALJ
2 dismissed the second Complaint on the grounds that the new claims
3 could be "traced to the allegations [] made six years earlier."
4 *Id.* at 4. Defendant's appeal was denied by the Administrative
5 Review Board. *Id.* at Ex. R.³

6 Defendant also commenced arbitration with the American
7 Arbitration Association "pursuant to the employment Agreement,"
8 but the Constellation Group obtained an order from the Supreme
9 Court of the State of New York staying arbitration. *Id.* at Ex.
10 W. Among other grounds, the New York court cited the fact that
11 Defendant "waived any right to arbitrate." *Id.*

12 As to the New Zealand action, which raised the California
13 tort of dismissal contrary to public policy, after a number of
14 preliminary hearings, the matter was dismissed for lack of
15 jurisdiction. *Id.* at Exs. Z - CC. Appeals before the High Court
16 of New Zealand was likewise dismissed. *Id.* at Exs. DD - EE.

17 Plaintiff cannot be held responsible for Defendant's
18 numerous unsuccessful attempts to pursue relief in other fora.
19 Defendant filed no counterclaims in this action, nor does it
20 appear that he has responded to discovery in any meaningful way,
21 nor has he prepared the case for trial. The court has been
22 endeavoring to conduct the trial of this case. The parties have
23 resisted the court's efforts by repeated requests for
24 continuances. Any costs incurred by Defendant outside the
25 confines of this litigation cannot reasonably be considered

26
27 ³ On March 5, 2009, Defendant filed a notice with the
28 Administrative Review Board of his intent to file a Sarbanes-
Oxley claim in federal court. Doc. 98 at Ex. S.

1 "prejudice" in this case.

2
3 2. Has there been excessive delay and lack of
4 diligence on the part of the plaintiff in
5 prosecuting the action?

6 Defendant suggests that Plaintiff has engaged in delay and
7 lack of diligence over the six years since the Complaint in this
8 case was filed, but fails to point to any specific conduct to
9 support his assertion. To the contrary, the extensive delay in
10 this case has been authorized by a series of stipulations,
11 entered into between Plaintiff and Defendant's former counsel,
12 Jacob M. Weisberg.⁴ See, e.g., Docs. 21, 25, 26, 28, 29, 30, 31,
13 32, 37, 39, 48. Since as early as May 2006, the parties sought a
14 continued stay of this litigation while the New Zealand
15 litigation progressed, despite the court's urging that this case
16 should be tried. Docs. 40, 42 & 45 (joint status reports). In
17 light of these stipulations, it is not appropriate to ascribe
18 "fault" for the slow pace of this litigation to the Plaintiff.
19 It has been entirely mutual.

20 3. Explanation of the need for dismissal.

21 Defendant also maintains that Plaintiff has provided an
22 "insufficient explanation of the need to take dismissal at this
23

24 ⁴ Mr. Weisberg's motion to withdraw was granted on
25 January 14, 2009, Doc. 69, on the ground that "communication
26 [had] broken down between Weisberg and Moldauer as to case
27 strategy and non-payment of attorney's fees. *Id.* at 1. Mr.
28 Moldauer disparages the services Mr. Weisberg rendered in this
case, Doc. 96 at 4, but this is not the proper forum to obtain
relief against Mr. Weisberg for any performance issues.

1 point." Doc. 96 at 7. But, Plaintiff has articulated its
2 rationale, namely that, in light of Mr. Moldauer's litigious
3 behavior and his seeming unwillingness to pay his former
4 counsel's legal fees, Plaintiff is simply not interested in
5 pursuing relief that will likely lead to yet more litigation
6 without any hope of collecting any financial judgment against Mr.
7 Moldauer. This is a legitimate concern that remains, in
8 substance, unchallenged by Defendant.

9
10 4. Other possible sources of prejudice.

11 Defendant objects that dismissal would deprive him of the
12 opportunity to assert a defense that would "vindicate his claims
13 about accounting irregularities...." Doc. 96 at 7. He cites
14 *Wojtas v. Capital Guardian Trust Co.*, 477 F.3d 924 (7th Cir.
15 2007)., which concerned plaintiffs who, faced with a meritorious
16 motion for judgment on the pleading based on statute of
17 limitations grounds, sought voluntary dismissal under Rule
18 41(a)(2) so that they could bring their case in a different
19 jurisdiction with a longer statute of limitations. *Id.* at 925-
20 26. The Seventh Circuit held that dismissal without prejudice
21 under such circumstances would result in "plain legal prejudice"
22 to defendants, who "acquired a right to assert the statute of
23 limitations bar by operation of Wisconsin law." *Id.* at 927-28.
24 "Wisconsin law conferred on [defendant] a vested right ... that
25 would have been rendered useless if voluntary dismissal without
26 prejudice was granted." *Id.* at 927. Here, in contrast,
27 Plaintiff has pointed to no "vested right" under any body of law
28 that would be "rendered useless" by voluntary dismissal in this

1 case. Moreover, unlike in *Wojtas*, Plaintiff does not indicate
2 any intent to re-file this lawsuit in another forum.

3 Defendant also cites *Hamm v. Rhone-Poulenc Rorer*
4 *Pharmaceuticals, Inc.*, 187 F.3d 941 (8th Cir. 1999), which
5 affirmed a district court's denial of a motion for voluntary
6 dismissal where a magistrate judge had already issued a
7 recommendation that certain claims be dismissed for failure to
8 state a claim. Under such circumstances, granting plaintiff's
9 motion for voluntary dismissal "would waste the substantial
10 efforts expended by the magistrate judge and the district court
11 and would prejudice defendants by depriving them of a valid
12 defense." *Id.* at 951. Here, unlike in *Hamm*, the district court
13 has not been briefed on or otherwise heard the merits of any of
14 Defendant's "defenses."

15 Finally, Defendant argues that voluntary dismissal would be
16 a "strategic advantage to Plaintiff, to the extent that Plaintiff
17 is immunized from any litigation in the future." Doc. 96 at 7.
18 It is not clear how any dismissal in this action would "immunize"
19 Plaintiff in any way from future litigation.

20 In sum, Plaintiff has offered a sufficient explanation for
21 the need to dismiss this action; Plaintiff has not unduly delayed
22 prosecution of its claims, nor demonstrated a lack of diligence;
23 and Defendant has incurred minimal expense and expended
24 essentially no effort preparing for trial in this matter.
25 Moreover, Defendant has ignored the preliminary injunction and
26 prior orders of the court. This conduct is disabling, as it
27 shows defendant will only act when he believes it is in his own
28 interest to do so. Plaintiff's motion for voluntary dismissal

pursuant to Federal Rule of Civil Procedure 41(a)(2) is GRANTED.

B. Requested Terms/ Conditions of Dismissal.

1. Plaintiff's Requests.

Plaintiff expresses concern that "Mr. Moldauer will attempt to mischaracterize the implications of, or reasons for, dismissal of this case in other proceedings." *Id.* at 7. For example, on April 23, 2008, Plaintiff and Mr. Moldauer's former attorney, Jacob Weisberg, entered into a stipulation setting this matter for trial. See *id.* at Ex. C & D. Despite entering into this stipulation, Mr. Moldauer later asserted that the setting of a trial date constituted actionable "harassment," advancing this theory as grounds for a Sarbanes-Oxley Act claim filed with the Department of Labor in June 2008. *Id.* at Ex. E. In fact, this evidences Defendant's willingness to delay the case for strategic advantage.

On February 10, 2009, in a "Notice of Representation" to this court, Mr. Moldauer asserted that Plaintiff's counsel, Mr. Zeiff, had inappropriately contacted him directly in 2003:

No doubt, Mr. Zeiff will not object to bringing his arguments in front of me as the opposing party; as he already did so by having a 'chit-chat' directly with me (!) in 2003. I still do not understand why, and then Mr. Weisberg, my attorney on record at the time, allowed this to happen. Mr. Zeiff may have a better explanation.

Id. at Ex. F (emphasis in original) There appears to be no basis in fact for Mr. Moldauer's objection to this contact, as Mr. Zeiff has presented documents demonstrating that Mr. Zeiff contacted Mr. Moldauer at his express request to address matters relating to Mr. Moldauer's first Sarbanes-Oxley Claim after

1 having been advised, both by Defendant and Mr. Weisberg, that Mr.
2 Weisberg had no role in that proceeding. See *id.* Ex. G.

3 Plaintiff calls attention to these matters here "not to show
4 that Mr. Moldauer should be sanctioned for deliberately
5 misleading the Court," but rather to "illustrate ... the modus
6 operandi that Mr. Moldauer has embraced for the last six years in
7 each of the many legal proceedings he has brought against
8 plaintiff and plaintiff's parent company." *Id.* at 8 n. 6.
9 Accordingly, Plaintiff requests that the order of dismissal in
10 this case contain certain statements aimed at constraining Mr.
11 Moldauer's ability to mischaracterize the implications of
12 dismissal. See Doc. 92.

13 However valid Plaintiffs' concerns may be, it is not
14 necessary or appropriate for the district court to issue findings
15 of this nature. The merits of this case have not been heard.
16

17 2. Defendant's Requests.

18 Defendant first requests that the case be dismissed with
19 prejudice, arguing that "[s]uch dismissal will recognize the long
20 period of the litigation, the staleness of the claims going back
21 to 2002, and the likelihood that refiling of the claims would be
22 barred by a limitations period or laches." Doc. 96 at 8. This
23 invitation is declined, in large part because Defendant seems
24 eager and willing to pursue claims against Plaintiff in other
25 fora. Dismissal with prejudice in this action would preclude
26 Plaintiff from raising the instant claims as counterclaims to any
27 such action, which would unfairly prejudice Plaintiff.

28 Second, Defendant requests that Plaintiff be required to pay

1 defendant's costs and attorney's fees. There is authority to
2 support such a condition, where failure to do so could prejudice
3 the defendant. See e.g., *Belle-Midwest Inc., v. Missouri*
4 *Property & Cas. Ins. Guar. Assoc.*, 56 F.3d 977, 978 (8th Cir.
5 1995). Here, however, Defendant has failed to establish the
6 nature of any costs or fees he incurred in connection with this
7 lawsuit, let alone that any such expenses were excessive or
8 caused him prejudice. He is also in violation of existing court
9 orders in this case.

10 Defendant specifically seeks an order to "prevent an award
11 of costs against him in New Zealand," and suggests that this
12 court has the power to condition dismissal on Plaintiff's
13 stipulation that it will not seek fees in New Zealand, citing,
14 among other cases, *Templeton v. Ned Lloyd Lines*, 901 F.2d 1273
15 (5th Cir. 1990) (imposing condition that plaintiff stipulate not
16 to oppose discovery in pending state court action). Even if
17 these cases could be read to empower the district court to impose
18 such a condition, Defendant has not established that doing so
19 would be just, nor does a U.S. Court have authority to decide any
20 issue before the courts of New Zealand.

21 Finally, Defendant requests that Plaintiff be ordered to
22 arbitration. Defendant provides no legal support for such a
23 requirement, particularly in light of the fact that the Supreme
24 Court of New York has already adjudicated the arbitration issue
25 in Plaintiff's favor. See Doc. 98, Ex. W.

26 ///

27 ///

28 ///

IV. CONCLUSION

For the reasons set forth above, this case is dismissed WITHOUT PREJUDICE pursuant to Federal Rule of Civil Procedure 41(a)(2) on the request of Plaintiff. Fees and costs are to be borne by the respective parties.

IT IS SO ORDERED.

Dated: June 2, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE