



Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

April 15, 2025

Russell L. Hirschhorn
 Member of the Firm
 d +1.212.969.3286
 f 212.969.2900
 rhirschhorn@proskauer.com
 www.proskauer.com

By ECF

The Honorable Laura M. Provinzino
 U.S. District Court Judge
 U.S. District Court for the District of Minnesota
 316 N. Robert Street
 St. Paul, MN 55101
 provinzino_chambers@mnd.uscourts.gov

Re: *Navarro et al. v. Wells Fargo & Company et al.*, Case No. 0:24-cv-03043-LMP-DTS

Dear Judge Provinzino:

We represent the Defendants in the above-referenced action and write pursuant to Local Rule 7.1(j) to oppose Plaintiffs' request for leave to file a motion for reconsideration (ECF No. 59). Plaintiffs seek such leave ostensibly for two reasons: (i) Plaintiffs contend that the Court should have afforded them an opportunity to amend their Complaint because in a footnote on the last page of their opposition brief they "request[ed] leave to replead" (ECF No. 38 at 41); and (ii) Plaintiffs contend that the Court erred in ruling that they cannot obtain retrospective equitable relief under ERISA section 502(a)(3). Plaintiffs' request for leave to seek reconsideration should be denied because they have neither shown the "compelling circumstances" required by Local Rule 7.1(j) to obtain such permission nor even attempted to explain the "manifest error of law" required to prevail on a motion under Federal Rule of Civil Procedure ("Rule") 59(e).¹

Plaintiffs' contention that reconsideration is appropriate because the Court entered judgment without allowing them to amend their Complaint is wrong as a matter of law. It is well established that where, as here, a complaint is dismissed for lack of subject matter jurisdiction, dismissal is without prejudice, *County of Mille Lacs v. Benjamin*, 361 F.3d 460, 464-65 (8th Cir. 2004), and it is within the court's discretion whether to allow plaintiffs to amend their complaint, *Doe v. N. Homes, Inc.*, 2020 WL 2316812, at *2 (D. Minn. May 11, 2020). Here, Plaintiffs never properly sought leave to amend. They have not complied with Local Rule 15.1, which provides that a motion to amend a pleading must be accompanied by a copy of the proposed amended pleading and a corresponding redline comparison. The Eighth Circuit also has held that a footnote in an opposition brief does not take the place of a motion seeking leave to amend a complaint. *See, e.g., SBFO Operator No. 3, LLC v. Onex Corp.*, 101 F.4th 551, 562 (8th Cir.

¹ Plaintiffs never met and conferred on their letter-request, but rather met and conferred only on whether Defendants would consent to a motion to amend their Complaint.



The Hon. Laura M. Provinzino

April 15, 2025

Page 2

2024).² That the court in *Lewandowski v. Johnson & Johnson*, 2025 WL 288230, at *7 (D.N.J. Jan. 24, 2025) permitted those plaintiffs to file an amended complaint prior to the entry of judgment is neither controlling nor persuasive, particularly since the complaint in that case had not been dismissed in its entirety.

Furthermore, a letter requesting permission to amend the Complaint is not the proper vehicle to seek leave to amend where, as here, the Court dismissed the Complaint and entered a judgment. Under these circumstances, Plaintiffs must first be granted leave to seek reconsideration and, if granted, establish a “manifest error of law” justifying reconsideration under Rule 59(e). *See Aery v. Unknown Beltrami Cnty. Deputies*, 2022 WL 1156742, at *1 (D. Minn. Apr. 19, 2022). Only then can Plaintiffs seek leave to amend their Complaint. *See, e.g., id.; In re SuperValu, Inc.*, 925 F.3d 955, 962 (8th Cir. 2019).

Plaintiffs’ request to seek reconsideration of the Court’s ruling on the availability of equitable relief fares no better. Even if, under certain circumstances, a plaintiff who proves a breach of fiduciary duty under ERISA could show an entitlement to monetary relief, that would not alter the outcome here. The Court ruled, independent of its other rulings, that Plaintiffs are not entitled to retrospective relief because “Plaintiffs’ allegations of individual harm are speculative at best and insufficient to establish Article III standing.” (ECF No. 57 at 27.)

In short, having failed to establish the requisite “compelling circumstances” or even attempt to identify any “manifest error of law,” the Court should not grant Plaintiffs’ request to file an amended complaint or seek reconsideration of the Court’s ruling. We thank the Court for its consideration of this letter.

Respectfully submitted,

/s/ Russell L. Hirschhorn

Russell L. Hirschhorn

cc All counsel of record

² The cases Plaintiffs cite, all of which addressed amendments following dismissal for failure to state a claim (as opposed to lack of subject matter jurisdiction), are not to the contrary. In fact, the two cases from the District of Iowa observed that “a conditional request for leave to amend must include, or must be shortly followed, by indication of the substance of the proposed amendment.” And, in the case from this District, the court exercised its discretion to delay entry of the judgment to allow plaintiffs to file an amended complaint.