



FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

NAHIDUL ISLAM,)
)
Plaintiff,)

vs.)

EDWIN PANGELINAN, JR., SAIPAN)
RADIO CAB COMPANY, ASIA PACIFIC)
HOTELS, INC. *dba* SAIPAN GRAND)
HOTEL, SALI SECURITY SERVICES,)
TRIPLE S SECURITY SERVICES, LLC,)
CARRIE SALI, LHENG SALI and DOES)
1-5,)
Defendants.)

CIVIL ACTION NO. 05-0263A

**ORDER GRANTING SALI
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

SALI SECURITY SERVICES, TRIPLE S)
SECURITY SERVICES, LLC, CARRIE)
SALI, and LHENG SALI,)
Cross-Plaintiffs,)

vs.)

EDWIN PANGELINAN, JR., SAIPAN)
RADIO CAB COMPANY, ASIA PACIFIC)
HOTELS, INC. *dba* SAIPAN GRAND)
HOTEL, and DOES 1-5,)
Cross-Defendants.)

1 **I. INTRODUCTION**

2
3 Nahidul Islam (“Plaintiff”) brings this personal injury action against Edwin Pangelinan,
4 Jr. (“Pangelinan”), Saipan Radio Cab Company (“Radio Cab”), Asia Pacific Hotels, Inc. d/b/a
5 Saipan Grand Hotel (“SGH”), and Sali Security Services (“Sali Security”), Triple S Security
6 Services (“Triple S”), Carrie Sali (“Carrie”), and Lheng Sali (“Lheng”), (collectively, “Sali
7 Defendants”) alleging, *inter alia*, that he was violently assaulted while on SGH premises.

8 Presently before the Court is Sali Defendants’ Motion for Summary Judgment,
9 (hereafter, “Motion”). The Court conducted a hearing on September 1, 2010 at 9:00 a.m. in
10 Courtroom 202. Plaintiff was represented by Victorino Torres. Sali Defendants were
11 represented by Ramon K. Quichocho. Steven P. Pixley, attorney for SGH, was also present.

12 Based on the papers submitted to date and oral arguments of counsel, the Court
13 GRANTS Sali Defendants’ Motion for Summary Judgment.

14
15 **II. BACKGROUND**

16 **A. Factual Background**

17 In a Fourth Amended Complaint filed on October 8, 2009, Plaintiff alleges as follows:

18 Plaintiff is a Bangladeshi citizen residing in the CNMI. Plaintiff owns Southwest Island
19 Tours, a company that provides sightseeing services to tourists including guests of SGH.
20 Defendant Pangelinan is an employee of Defendant Radio Cab, a family owned business.
21 Defendant SGH is a CNMI corporation. Defendant Sali Security was a business organized and
22 operated, at the time of the incident, under CNMI law. Defendant Triple S is a business
23 organized under CNMI law. Defendants Carrie and Lheng are both U.S. citizens residing in
24 CNMI and co-owners of Sali Security and Triple S.

25 On February 3, 2005, Plaintiff went to SGH to pick up two clients. Upon escorting his
26 clients to the car, Plaintiff found that his car was blocked by three taxicabs owned by Radio
27 Cab. Pangelinan, an employee of Radio Cab, started shouting at Plaintiff and asking Plaintiff
28 why he was taking customers from SGH. Sensing hostility from Pangelinan, Plaintiff
29 proceeded to SGH’s front desk to seek assistance. Despite his request to the front desk
30 attendant to call security, the attendant did not call security.

1 Pangelinan and three John Does followed Plaintiff into the SGH lobby where
2 Pangelinan instructed one of the John Does to “kill” Plaintiff. Upon Pangelinan’s instruction,
3 one of the John Does punched Plaintiff on the right side of his head causing him to fall to the
4 lobby floor and become unconscious. Plaintiff later regained consciousness in the hospital.

5 At the time of the incident, Sali Security Services, owned by Carrie Sali and Lheng Sali,
6 was under a contract with SGH to provide security services to SGH.

7 8 **B. Procedural Background**

9 Plaintiff first filed a Complaint on June 30, 2005 naming Pangelinan, Radio Cab, SGH,
10 and John Does 1-5 as defendants. In the Complaint, Plaintiff alleges, among other things, that
11 SGH breached its duty by failing to have adequate security on the premises, failing to have
12 security guards or adequately trained or competent personnel on duty at the time of the attack,
13 failing to adequately respond to Plaintiff’s cries for assistance or adequately investigate the
14 incident, and failing to provide a reasonably safe place for its patrons.

15 On July 15, 2005 Plaintiff filed a First Amended Complaint, alleging facts substantially
16 similar to those alleged in the original Complaint. On August 12, 2005 Defendants Pangelinan
17 and Radio Cab filed answers to the First Amended Complaint. On August 17, SGH filed its
18 answer. The parties proceeded to conduct pre-trial discovery.

19 On March 11, 2009, nearly four years after the first complaint was filed, Plaintiff filed a
20 Second Amended Complaint, adding Sali Security as a defendant. The allegations against Sali
21 Security are similar to those against SGH, namely that Sali Security had a contract with SGH to
22 provide security services but failed to provide adequate security services on the day of the
23 incident to protect Plaintiff from harm. SGH filed an answer to the Second Amended
24 Complaint.

25 On April 22, 2009 Plaintiff filed a Third Amended Complaint, adding Triple J Security
26 Services, Carrie and Lheng as defendants alleging that they failed to provide adequate security
27 to protect Plaintiff. This time, both SGH and the Sali Defendants filed answers.

28 Finally, on October 8, 2009 Plaintiff filed a Fourth Amended Complaint, replacing
29 Triple J Security with Triple S as a defendant. Before the Court is Sali Defendants’ motion for
30 summary judgment. Sali Defendants contend that Plaintiff’s claims against them have expired.

1 **III. STANDARDS**

2 **A. Summary Judgment**

3 Summary judgment is appropriate where the materials submitted to the Court
4 demonstrate “that there is no genuine issue of material fact and that the moving party is entitled
5 to judgment as a matter of law.” NMI R. Civ. P. 56(c); e.g. *In re Estate of Roberto*, 2002 MP
6 23 ¶14. The purpose of summary judgment “is to isolate and dispose of factually unsupported
7 claims or defenses.” *Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986).

8 The moving party always bears the initial burden of informing the court of the basis for
9 its motion and identifying the evidence which it believes demonstrates the absence of a genuine
10 issue of material fact. *Id.* at 323. The non-moving party must then identify specific facts “that
11 might affect the outcome of the suit under the governing law,” thus establishing that there is a
12 genuine issue for trial. NMI R. Civ. P. 56(e).

13 In deciding a summary judgment motion, a court must construe the evidence and
14 inferences drawn from the underlying facts in the light most favorable to the non-moving party.
15 *Santos v. Santos*, 4 NMI 206, 209 (1995) (citing *Rios v. Marianas Pub. Land Corp.*, 3 NMI
16 512, 518 (1993)); *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248 (1986).

17
18 **B. Amendment under Rule 15(a)**

19 When a party can no longer amend a pleading as a matter of right under Rule 15(a), the
20 party must either petition the court for leave to amend or obtain consent from the adverse
21 parties. NMI R. Civ. P. 15(a).¹ Leave shall be freely given when justice so requires. *Id.*
22 “This policy is to be applied with extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*,
23 316 F.3d 1048, 1051 (9th Cir. 2003).

24 However, leave is not automatic. Case law outside the Commonwealth has shaped a
25 multi factor test to determine whether leave should be granted in the interest of justice. Leave
26 to amend need not be granted where the amendment: (1) prejudices the opposing party; (2) is
27 sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile. *Amerisource*
28 *Bergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006); *Bowles v. Reade*, 198
29 F.3d 752, 757 (9th Cir. 1999). Prejudice to the defendant is the most important factor. *See*

¹ While Plaintiff did not seek leave to file its 2009 amended complaints, Defendants have not objected to the amendments until now.

1 *Eminence Capital*, 316 F.3d at 1052; *Keniston*, 717 F.2d at 1300. The burden of showing
2 prejudice rests on the party opposing amendment. *DCD Programs, Ltd. v. Leighton*, 833 F.2d
3 183, 186 (9th Cir.1987).

4 5 **IV. DISCUSSION**

6 **A. Triple S**

7 In its motion, Sali Defendants set forth evidence that Triple S did not exist prior to July
8 2006. (Declaration of Carrie Sali in Support of Motion for Summary Judgment ¶ 2, hereafter,
9 “Carrie Decl.”) A certificate of organization shows that Triple S came into existence no earlier
10 than May 2006. (Carrie Decl. Ex. 1.) Plaintiff claims that Triple S and Sali Security are the
11 same type of business and have the same owners. (Fourth Amended Complaint ¶ 7.) However,
12 Plaintiff does not contend nor does he offer evidence that Triple S and Sali Security are the
13 same company, that Triple S assumed any of the liabilities of Sali Security, or that Triple S had
14 any involvement in the events giving rise to Plaintiff’s cause of action. Given the
15 uncontroverted evidence that Triple S did not exist until 2006, summary judgment is
16 appropriate in favor of Triple S on all of Plaintiff’s claims against it.

17 18 **B. Statute of Limitations and Rule 15(c)**

19 The Sali Defendants contend that claims against them are barred because they were not
20 sued within the applicable statute of limitations.

21 A civil action must be commenced within the period specified by the applicable statute
22 of limitations, and “a civil action is commenced by filing a complaint with the court.” NMI R.
23 Civ. P. 3. When the statute of limitation period has run, the only vehicle through which
24 plaintiff may amend his complaint to accurately name a defendant is Rule 15(c). *G.F. Co. v.*
25 *Pan Ocean Shipping Co.*, 23 F.3d 1498, 1501 (9th Cir. 1994); *Korn v. Royal Caribbean Cruise*
26 *Line, Inc.*, 724 F.2d 1397, 1399 (9th Cir. 1984).

27 Here, Plaintiff’s cause of action accrued on February 3, 2005, the day he was assaulted
28 at SGH. Under Commonwealth laws, actions for assault and battery and actions for personal
29 injury must “be commenced only within two years after the cause of action accrues.” 7 CMC
30 § 2503(a) and (d). Therefore, the statute of limitations would have run on February 2, 2007.

1 Plaintiff timely filed his original complaint on June 30, 2005. However, Plaintiff did not add
2 the first Sali Defendant until March 2009, after the statute of limitations had expired. Plaintiff
3 concedes that no exceptions apply to toll the statute of limitations on Plaintiff's cause of
4 action. Thus, unless Plaintiff satisfies the relation back requirements of Rule 15(c), the
5 amended complaints adding the Sali Defendants would be barred by the statute of limitations.
6

7 **C. Relation Back under Rule 15(c)(3)**

8 The Court looks to Rule 15(c)(3) to determine whether claims against the Sali
9 Defendants can overcome the statute of limitations.²

10 An amendment relates back to the date the original complaint was filed if:

11 . . . (3) the amendment changes the party or the naming of the party
12 against whom a claim is asserted if the foregoing provision (2) is satisfied³ and,
13 within the period provided by Rule 4(m) for service of the summons and
14 complaint, the party to be brought in by amendment (A) has received such
15 notice of the institution of the action that the party will not be prejudiced in
16 maintaining a defense on the merits, and (B) knew or should have known that,
17 but for the mistake concerning the identity of the proper party, the action would
18 have been brought against the party.
19

20 NMI R. Civ. P. 15(c)(3). Relation back, therefore, allows a case to proceed against a new or
21 changed party even if the amendment is made after the time period set forth by the statute of
22 limitations has expired.

23 As a threshold issue, Sali Defendants contend that Rule 15(c)(3) does not apply to
24 Plaintiff's amended complaints because Sali Defendants were added as new parties rather than
25 substituted for any "John Doe" defendants. (Motion at 7.)⁴ They argue that Plaintiff's
26 amendments did more than "merely change the party or naming of the party" within the
27 meaning of Rule 15(c). (*Id.*) Although Rule 15(c) only refers to an amendment "changing the

² Contrary to Plaintiff's contentions, Rule 15(c)(2) cannot be used for relation back purposes when new defendants are added after the statute of limitations has run. *Arreola v. Godinez*, 546 F.3d 788, 796 (7th Cir. 2008); *Asher v. Unarco Material Handling, Inc.*, 596 F.3d 313, 318 (6th Cir. 2010).

³ Provision (2) requires that "the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings." NMI R. Civ. P. 15(c)(2).

⁴ Sali Defendants continuously refer to the fact that "the same five 'John Doe' defendants were named" in every amended complaint filed by Plaintiff. (Motion at 3.) Plaintiff is not attempting to replace the Doe defendants with the Sali Defendants. Thus, Sali Defendants' focus on that fact is irrelevant to the relation-back question.

1 party,” the federal courts⁵ have consistently held that the rule extends to the “addition” of
2 parties also. *Raynor Bros. v. American Cyanimid Co.*, 695 F.2d 382, 384 (9th Cir. 1982). The
3 circumstance of a plaintiff filing an amended complaint seeking to bring in a new defendant is
4 the “typical case” of Rule 15(c)[3]’s applicability. *Krupski v. Costa Crociere S. p. A.*, 130 S.
5 Ct. 2485, 2493 n.3, 177 L. Ed. 2d 48, 57 (2010). Thus, Rule 15(c)(3) applies provided its three
6 requirements are met.

7 ***1. Provision (2) of Rule 15(c)***

8 The first element of Rule 15(c)(3) requires that “the claim or defense asserted in the
9 amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to
10 be set forth in the original pleadings.” NMI R. Civ. P. 15(c)(2). Plaintiff’s amended
11 complaints indisputably satisfy the first requirement because they simply add the names of the
12 newly discovered defendants without altering the underlying cause of action stated in the
13 original complaint. Specifically, Plaintiff alleges that he was assaulted at SGH on February 3,
14 2005. Further, both SGH and Sali Defendants are alleged to have failed to provide adequate
15 security services to Plaintiff and as a result of such failure, Plaintiff has suffered harm.
16 (Complaint ¶ 19; Fourth Amended Complaint ¶ 36.) Thus, the claims in the amended
17 complaints clearly arise out of the same occurrence set forth in the original complaint.

18 ***2. Notice***

19 The second element requires that Sali Defendants receive notice of the institution of the
20 action within the time prescribed by Rule 4(m) of the Commonwealth Rules of Civil Procedure.
21 NMI R. Civ. P. 15(c)(3)(A). As the U.S. Supreme Court noted in discussing Rule 15(c), “[t]he
22 linchpin is notice, and notice within the limitations period.” *Schiavone v. Fortune*, 477 U.S. 21,
23 31 (1986). The limitations period under Rule 4(m) is 240 days from the date the original
24 complaint was filed. NMI R. Civ. P. 4(m).

25 Here, Plaintiff’s service of the summons and Third Amended Complaint less than
26 twenty days after it was filed in April 2009, but nearly four years from the date of the original

⁵ Where the Commonwealth rules are substantially patterned after the federal rules, it is appropriate to look to federal case law construing the federal rules for guidance in interpreting our local counterpart. *See Ishimatu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60; *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 8 n.1 (*citing Commonwealth v. Ramangmau*, 4 NMI 227, 233 n.3 (1995)). The relevant portions of Rule 15(c) exactly mirror the corresponding Federal Rules of Civil Procedure. Thus, federal court decisions interpreting Federal Rule 15(c) are instructive.

1 complaint, does not satisfy the notice requirement within the 4(m) period. However, the U.S.
2 Supreme Court has rejected the suggestion that Rule 15(c) requires actual service of process.
3 See *Krupski*, 130 S. Ct. at 2497 n.5. The rule simply requires that the prospective defendant
4 receive sufficient “notice of the action” within the *Rule 4(m)* period that he will not be
5 prejudiced in maintaining his defense on the merits. *Id.* Thus, the notice required by Rule
6 15(c) can be formal or informal, actual or constructive. *Craig v. United States*, 479 F.2d 35, 36
7 (9th Cir. 1973); *Miller v. Hassinger*, 173 Fed. Appx. 948, 955 (3rd Cir. 2006).

8
9 *a. Actual Notice*

10 Sali Defendants maintain that they first received notice of the lawsuit in May 2009,
11 when they were added as defendants. (Carrie Decl. ¶ 6; Declaration of Service, e-filed May 8,
12 2009.) Plaintiff contends that Sali Defendants should have been aware of the lawsuit within the
13 4(m) period because they have provided written reports concerning the incident.

14 Sali Defendants might have been in the position where they would have participated in
15 the pending lawsuit because at least one Sali Security officer was present around the time of the
16 alleged assault. For instance, Sali Defendants may have engaged in the discovery process by
17 answering interrogatories or attending depositions within the 4(m) period, in which case, they
18 would have had actual notice of the lawsuit. However, the fact that Sali Defendants provided
19 written reports to SGH or to the police concerning the assault on Plaintiff does not by itself
20 show that they were aware that Plaintiff had indeed filed a lawsuit. Notice of the incident
21 giving rise to the cause of action is insufficient to give notice of the action itself. See *Korn*, 724
22 F.2d at 1400. Without more, the Court cannot find that Sali Defendants had actual notice of the
23 pending lawsuit.

24 *b. Constructive/ Imputed Notice*

25 Plaintiff further contends that knowledge of the lawsuit should be imputed on Sali
26 Defendants by virtue of their contractual relationship with SGH. (Plaintiff’s Opposition to
27 Defendant’s Motion for Summary Judgment at 6, hereafter, “Opposition.”)

28 Imputing knowledge of the action from the original defendants to the prospective
29 defendant is justified when there is “sufficient community of interest” between the two entities.
30 *Korn*, 724 F.2d at 1401. However, such a community, or identity, of interests exists between
two companies only when “the parties are so closely related in their business operations or

1 other activities that the institution of an action against one serves to provide notice of the
2 litigation to the other.” *G.F. Co. v. Pan Ocean Shipping Co.*, 23 F.3d 1498, 1503 (9th Cir.
3 1994) (quoting 6A Charles Miller, et al., *Federal Practice and Procedure* § 1499 at 146 (2d ed.
4 1990).

5 Although the relationship needed to satisfy the identity of interest test
6 varies somewhat depending on the underlying facts, some general observations
7 may be made. An identity of interest has been found between a parent and a
8 wholly owned subsidiary, as well as between related corporations whose
9 officers, directors, or shareholders are substantially identical and who may have
10 similar names or conduct their business from the same offices.
11

12 6A Charles Alan Wright, et al., *Federal Practice and Procedure* § 1499 at 146 (2d ed. 1990).
13 In *Pan Ocean*, the Ninth Circuit found such a close relationship between a company and its
14 agent that notice to the agent could be imputed to the principal company. Courts have also
15 found constructive notice where there was “some communication or relationship” between the
16 attorney for the named defendants and the parties sought to be added as defendants.
17 See *Singletary v. Pennsylvania Dep’t of Corrections*, 266 F.3d 186, 196-97 (3rd Cir. 2001);
18 *Garvin v. City of Philadelphia*, 354 F.3d 215, 225 (3rd Cir. 2003).

19 Here, Plaintiff does not allege that there is a parent-subsiary or other similarly close
20 business relationship between SGH and Sali Defendants. Neither is there evidence of any
21 communication or relationship between the Defendants’ attorneys. Plaintiff argues instead that
22 the Court should impute notice to Sali Defendants because of their contractual relationship.
23 Plaintiff contends the community of interest here is that Sali Defendants have a contractual
24 obligation to SGH to provide security services and keep the premises safe. (Opposition at 6.)

25 “Contractual relationships, by themselves, are insufficient to demonstrate a community
26 of interest justifying an imputation of knowledge.” *Bailey v. United States*, 289 F. Supp. 2d
27 1197, 1208 (D. Haw. 2003). In *Bailey*, the court found that while notice to one Shell defendant
28 may have provided notice to another Shell defendant, the fact that a Shell defendant had
29 contractual relationships with unrelated companies that knew of the action did not impute that
30 knowledge on that Shell defendant.

31 In *Brooks v. ComUnity Lending, Inc.* the plaintiff argued that notice should be imputed
32 on the new defendant because the named defendant in the original action, ComUnity, was
33 contractually obligated to put the new defendant on notice of the suit. *Brooks v. ComUnity*

1 *Lending, Inc.*, 2009 U.S. Dist. LEXIS 91455 (N.D. Cal., September 29, 2009). The court found
2 that even though the named defendant had such an obligation to inform the new defendant of
3 the lawsuit, absent allegations supporting a finding of the kind of “community of interest”
4 sufficient for constructive notice, the plaintiff cannot satisfy Rule 15(c). *Id.*

5 Here, SGH had no obligation to notify Sali Defendants of the lawsuit. Sali Security is a
6 private company providing security services to SGH, a hotel business. SGH and Sali Security
7 are not related businesses outside of this contractual relationship. In fact, the two companies
8 appear to have an adverse relationship as evidenced by the cross claims Sali Defendants have
9 brought against SGH. Absent other circumstances that permit the inference that notice was
10 actually received, Sali Security, as an independent contractor does not share a sufficient nexus
11 of interests with SGH that would justify imputing knowledge of such a lawsuit on Sali
12 Defendants for Rule 15(c)(3) purposes.

13 Plaintiff asserts that because Sali Security has promised to indemnify SGH,⁶ Sali
14 Defendants should have been aware of the lawsuit. In *Bailey*, the Plaintiff represented to the
15 court that the contract between Activity World and the Shell Defendants indicated that the Shell
16 Defendants would indemnify Activity World if Activity World were sued. *Bailey*, 289 F. Supp.
17 2d at 1208. The court found that such an indemnity clause was insufficient to impute
18 knowledge of the action on the new defendants. *Id.* Likewise, Plaintiff’s claim that there is a
19 provision in the contract requiring Sali Defendants to indemnify SGH is insufficient. SGH was
20 indeed sued in this lawsuit, but there is no evidence that SGH ever offered its defense to the
21 Sali Defendants or made any mention of the existence of this lawsuit to the Sali Defendants.

22 Accordingly, Sali Defendants did not have constructive notice of the action prior to the
23 expiration of the 4(m) period.

24 *c. Prejudice*

25 Prejudice to the prospective defendant is a main concern when determining whether the
26 relation back doctrine applies. *Korn*, 724 F.2d at 1400; NMI R. Civ. P. 15(c)(3)(A). Timely

⁶ The indemnification clause provides that Sali Security will hold SGH harmless “from and against any damages loss or liability to property or persons, however caused and arising because of the negligence on the part of [Sali Security], its employees, representatives, and agents in providing security services under this contract.” (Opposition, Ex. A.)

1 notice assures that the party to be added has received ample opportunity to pursue and preserve
2 the facts relevant to various avenues of defense. *Id.*

3 Plaintiff has failed to show that Sali Defendants received notice of the action within the
4 required time period. Because notice cannot be imputed to them as of the time SGH received
5 notice, Sali Defendants have not had the adequate time to prepare their defense. The case is in
6 the late stages of discovery and trial is set for December 13, 2010. With the passage of time,
7 valuable evidence may have been lost or witnesses have become unavailable. Even if SGH
8 preserved all the evidence through active litigation in the last five years, because they have
9 interests adverse to Sali Security, it cannot be said that Sali Defendants would not be prejudiced
10 in maintaining their defense to the action.

11 Plaintiff has not provided any evidence to show that Sali Defendants received actual or
12 constructive notice of the action prior to the expiration of the 240-day period following the
13 filing of the original complaint as required by Rule 13(c)(3). Sali Defendants will suffer unfair
14 prejudice if they are forced to defend a case that is now five years old. Furthermore, in light of
15 the fact that they did not have proper notice of the action, it would be impossible for Sali
16 Defendants to know that but for the mistake concerning the identity of the proper party, the
17 action would have been brought against them under the third element of Rule 15(c)(3). NMI R.
18 Civ. P. 15(c)(3)(B).

19 Accordingly, the Second, Third, and Fourth Amended complaints cannot relate back to
20 the filing date of the original complaint.

21
22 **V. CONCLUSION**

23 For the forgoing reasons, Defendant's Motion for Summary Judgment is GRANTED.
24 The Sali Defendants are hereby dismissed.

25
26 **SO ORDERED** this 4th day of October, 2010.

27
28 _____
29 /s/
30 **ROBERT C. NARAJA**
31 Presiding Judge