



May 21, 2021

*Memo endorsed*

Norton Rose Fulbright US LLP  
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United States

VIA ECF

The Honorable Judge John G. Koeltl  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
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New York, NY 10007

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Re: *Republic of Kazakhstan and Outrider Management, L.L.C. v. Daniel Chapman et al.*,  
1:21-cv-03507 (JGK-BM)

Dear Judge Koeltl:

Pursuant to the Court's direction at the May 18, 2021 pre-motion conference, counsel for the parties have reached substantial agreement on, and jointly request the Court's approval of, a briefing schedule for the three motions discussed: (1) Plaintiffs' Motion to Remand; (2) Defendants' Motion to Dismiss Plaintiff Republic of Kazakhstan's Claims; and (3) Defendants' Motion to Compel Arbitration of Plaintiff Outrider Management, L.L.C.'s Claims.

The parties seek the Court's approval of the following schedule:

1. Each party shall file its motion(s) on or before May 28, 2021;
2. Opposition papers shall be filed on or before June 11, 2021; and
3. Reply papers shall be filed on or before June 18, 2021.

There is one issue on which the parties were not able to reach agreement concerning Plaintiffs' right to file a second amended complaint after reviewing Defendants' motions. The parties' respective positions are set forth below.

### **Plaintiffs' Position**

Plaintiffs understood the Court to state at the pre-motion conference that Plaintiffs can consider whether it wants to amend its complaint after reviewing Defendants' motions, and the Court would permit that amendment, rather than Plaintiffs first having to seek leave. Plaintiff understood this from the following language at the end of the conference:

*THE COURT: Okay. Well, as I indicated, both sides should be permitted to proceed with their motions. The plaintiff can certainly consider whether it wants to file an amended complaint and could do that after the defendants file their respective motions. If the plaintiff only makes the decision to file an amended*

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*complaint after the motion to dismiss is filed, that complicates the schedule a bit, but the plaintiff can still do that. It would be more efficient than having to decide an entire motion to dismiss only for the plaintiff to say, by the way, Judge, we can file an amended complaint that resolves these issues.*

May 18, 2021 Hearing Tr. at 23:4-15 (emphasis added). This, in Plaintiff's understanding, reinforced the point made earlier by the Court regarding a plaintiff's general right to file an amended complaint. *Id.* at 17:2-10.

In addition, if Plaintiffs' were required to file a motion for leave to file an amended complaint, such a motion would require a pre-motion letter, a pre-motion conference, a full round of briefing and the Court's ruling – all of which would create substantial additional delay. This delay would appear to run counter to the Court's expressed wish to resolve the pending issues as efficiently as possible, and is a further reason why Plaintiffs understood the Court to have stated at the pre-motion conference that they did not first have to seek leave.

Plaintiffs appreciate the Court's clarification on this issue as they do not want to burden the Court with any unnecessary briefing in the event that, after Defendants' impending motions are filed, Plaintiffs decide that filing a further amended complaint would be most efficient way to proceed.

### **Defendants' Position**

Defendants understand that Plaintiffs seek to preserve their ability to amend their First Amended Complaint. At the May 18, 2021 conference, the Court advised Plaintiffs that they could decide whether to amend their First Amended Complaint. Plaintiffs did not indicate whether they intended to do so at that time.

Defendants did not understand the Court to have indicated that Plaintiffs are permitted to file a second amended complaint - as of right - without Defendants' written consent or the Court's leave, as required by Rule 15(a)(2) of the Federal Rules of Civil Procedure. Accordingly, Defendants reserve the right to challenge a second amendment of the complaint and do not consent to Plaintiffs' amendment of the Amended Complaint without first seeking the Court's leave. Defendants do not oppose Plaintiffs' hypothetical motion to amend their Amended Complaint in order to delay the proceedings; rather, it is Defendants' position that Plaintiffs are required to comply with the Federal Rules of Civil Procedure.

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Respectfully,

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1. The schedule is approved.  
2. The plaintiff may file an amended Complaint promptly in response to the defendants' motions. The parties should agree if possible on the schedule if such an amended complaint is filed. The Court appreciates that the amended complaint may trigger either an answer or a new motion to dismiss.  
SO ORDERED.  
5/24/21 JGK/USP.J.