

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA**

ENERGY TRANSFER EQUITY, LP, *ET AL.* PLAINTIFFS

VS. 1:17-CV-00173-BRW

GREENPEACE INTERNATIONAL, *ET AL.* DEFENDANTS

ORDER

On July 25, 2018, I directed Plaintiffs to show cause why “Earth First!” (“EF!”) should not be dismissed as a party for failure to serve.¹ I noted Plaintiffs served Earth First! Journal (“Journal”), a legal entity based in Lake Worth, Florida, not EF!, which Plaintiffs admit is the name of a movement used by a number of different individuals and entities.²

Plaintiffs responded to the Show Cause Order³ and incorporated a Motion to Amend or for Leave to Conduct Limited Discovery. (Doc. No. 91). For the reasons set out below, Plaintiff’s motion is GRANTED in part and DENIED in part. Plaintiffs may amend their complaint to name any person or entity directly responsible for the acts complained of. Plaintiffs may also name any person or entity who directly provided monetary support to commit the acts complained of. Plaintiffs, however, must have evidentiary support for their factual contentions.⁴

¹Doc. No. 88.

²Doc. No. 34, p. 3 (“Several of the individuals associated with the Earth First! movement use the name Earth First! in association with other entities and efforts which do the work of Earth First!”).

³Doc. Nos. 89 and 90.

⁴It is clear from Plaintiffs’ voluminous filings of historical, irrelevant web postings that Plaintiffs did not, at the time of filing, have evidentiary support for the specific allegations against EF!. Plaintiffs are reminded of their obligations under Rule 11(b) of the Federal Rules of Civil Procedure.

Journal is not, at this point, a proper party to this suit. Plaintiffs have also failed to show why Journal would be an appropriate party. Accordingly, leave to conduct discovery on nonparty Journal is DENIED.⁵

It is still unclear from the response if Plaintiffs claim Journal is EF! or Journal is only an “agent” of EF!. Plaintiffs did not properly identify Journal in their Complaint, either directly or as an agent. Plaintiffs now allege EF! and “sister Earth First! chapters” have their own websites, but Journal “is the publication for the unincorporated association, Earth First! and serves as its public face.”⁶ It appears from this record that naming Journal as a party responsible for the alleged RICO enterprise would be futile and possibly frivolous.

Instead of clarifying the issues of service and entity, Plaintiff further muddies the water. On July 27, 2018, Plaintiffs served Marion De Jong, who is not a party and “was the President of Night Heron Grassroots Activist Center, which formerly held the tradestyle for Earth First! Journal.”⁷ This is wholly insufficient to provide notice to an entity subject to suit (as alleged by Plaintiffs) that allegedly provided hundreds of thousands of dollars to fund an international terrorist, drug-smuggling RICO enterprise.

IT IS SO ORDERED this 3rd day of August, 2018.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

⁵It seems to me that discovery would be appropriately directed at members of the “Red Warrior Camp” or other individuals who use the Earth First! name and who allegedly received \$500,000.00 from “Earth First!” to commit criminal acts. But Plaintiffs have not named a single, directly responsible individual in their complaint, even though they did in another related complaint. See *Dakota Access, LLC v. Archambault, II, et al.*, 1:16CV296-DLH-CSM, Doc. No. 1, pp. 9. 57 (N.D.D closed March 19, 2018)(One of Plaintiffs’ companies sued individuals who they allege committed criminal acts to disrupt their construction of DAPL in a related suit).

⁶Doc. No. 34, p. 6.

⁷Doc. Nos. 89, p. 5 and 90-14