

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ONE
CASE NO. 17-CI-1348
Electronically Filed

JEFFREY C. MAYBERRY, *et al.*

PLAINTIFFS

v.

KKR & CO. L.P., *et al.*

DEFENDANTS

**COMBINED RESPONSE¹ TO THE TIER 3 INDIVIDUALS' MOTION FOR ENTRY OF
PRE-TRIAL ORDER NO. 1 AND MOTION FOR ACCOUNTING**

Through their above-referenced filings late in the evening on February 15, the Tier 3 Individuals² continue to ignore the Orders of this Court and the Rules of Civil Procedure, disrupting the proceedings and taxing the time and resources of the Court and the parties to this case to no purpose. They should be admonished to stop.

The Tier 3 Individuals are not parties to this action. Their only connection to this case is that some of their lawyers previously represented a subset of the plaintiffs whose claims were dismissed for lack of standing. Nevertheless, the lawyers for the Tier 3 Individuals have now twice moved to “amend” the dismissed complaint by adding their new clients as parties.

¹ This Response is made on behalf of the following “Defendants:” Prisma Capital Partners LP, Girish Reddy, PAAMCO Prisma, LLC (formerly Pacific Alternative Asset Management Company, LLC), Jane Buchan, KKR & Co. L.P., Henry Kravis, George Roberts, The Blackstone Group Inc. (formerly The Blackstone Group L.P.), Stephen A. Schwarzman, and J. Tomilson Hill. Defendants file this Response without prejudice to their respective defenses based on, among other things, the Court’s lack of jurisdiction to act on the motions. Defendants The Blackstone Group Inc., Schwarzman, Hill, KKR & Co. L.P., Kravis, and Roberts make this filing without waiver of, and expressly preserve, all defenses based on, among other things, lack of personal jurisdiction.

² The “Tier 3 Individuals” are Tia Taylor, Ashley Hall-Nagy and Bobby Estes.

This Court has rightly rejected those applications. On January 12, 2021, the Court explained that it “cannot rule on the motion to allow the Tier 3 Group to intervene and assert claims until it knows the nature and scope of the claims that will be asserted by the OAG in its proposed Amended Intervening Complaint under CR 15.” Order at 1. In defiance of the Court’s ruling, before the OAG filed its proposed Amended Complaint, the Tier 3 Individuals filed a motion to intervene in the OAG’s action. The pending intervention motion, which the Court has already recognized must logically await the filing of the OAG’s proposed Amended Complaint, has not been briefed, let alone decided.

Even though they remain non-parties to this litigation, the Tier 3 Individuals continue to defy this Court’s orders and the Rules of Civil Procedure by filing preposterous “motions” with inflammatory rhetoric that accuse almost everyone—including Defendants, the OAG, KRS, the Calcaterra Pollack firm, defense counsel and all three branches of Kentucky’s government—of corruption, incompetence, or worse. In their latest filings, for example, hedge funds are “loan sharks” (Motion for Accounting, at 2), who are “avaricious and dishonest” and represented by “ruthless” attorneys who file “frivolous” motions. (Motion for Pre-Trial Order, at 9, 14). In the Tier 3 Individuals’ telling, the OAG is “all hat, no cattle” and incapable of independently evaluating whether the claims have any legitimate basis. (Motion for Pre-Trial Order, at 2, 6, 11, 20). The Tier 3 Individuals now accuse KRS management of being “implicated in the wrongdoing,” with KRS’s executive director holding a “corrupting influence” over KRS. (*Id.*, at 18). Even the Calcaterra Pollack firm, evidently engaged by the KRS Board to conduct an independent review of the claims conjured by the Lerach firm, is attacked as having “little

experience” and embarking on a “whitewash.” (*Id.* at 10).³ Indeed, the Tier 3 Individuals argue the entire government of the Commonwealth is corrupt, citing articles concerning corruption in the legislative branch, executive branch and the Kentucky courts. (*Id.*, at 20, n. 15).

This pattern of conduct is abusive. Individuals who are not “parties” cannot file motions in pending civil actions. Franklin Cir. Ct. LR 4.01. These filings are unfair to the actual Parties, who are forced to review and decide whether to ignore off-the-wall rhetoric by three individuals who do not have a claim in this action or run the risk of dignifying it with a response. They are also unfair to the Court, which has repeatedly reminded the Tier 3 Individuals that they are not parties, only to have its rulings sullied by still more over-the-top motions.⁴

The Tier 3 Individuals’ motivation for these repetitive and disruptive filings is transparent. They apparently believe that if they continue to refer to themselves as “Plaintiffs,” continue to “move” for “relief” (to which they are not entitled), and continue to secure themselves time on the Court’s motions calendar on a near-weekly basis, the Court will ignore the threshold legal requirements necessary to determine that intervention is proper and simply allow them to enter this suit based on their insistence alone. That, of course, is not how Kentucky’s Civil Rules work. If the Tier 3 Individuals really believe they have a legitimate basis

³ Notably, the firm that Ms. Lerach’s pleading accuses of carrying out a “whitewash” was co-founded by a former long-time partner of Milberg Weiss Bershad Hynes & *Lerach* LLP, the firm in which Ms. Lerach was formerly a partner, and of which her now-disbarred husband was a named partner.

⁴ Indeed, at the outset of this case, counsel for the Tier 3 Individuals filed a similarly bombastic Motion to Enter Case Management Orders Establishing a Discovery and Litigation Plan for this Matter. Even though that motion was filed on behalf of the *actual plaintiffs* in the lawsuit, rather than the non-parties seeking to impose a discovery and litigation plan on the parties here, this Court still recognized that such a motion was premature prior to the resolution of the dispositive threshold legal issues, and held the motion in abeyance pending decisions on Defendants’ motions to dismiss. *See* March 8, 2018 Order at 3.

to intervene in this action, they would be content to rest on the merits of their intervention motion, on which the Court will schedule briefing, and rule, as it deems appropriate.

Accordingly, Defendants respectfully request that the Court strike the Tier 3 Individuals' Motion for Entry of Pre-Trial Order No. 1 and Motion for Accounting. Those pleadings should not have been filed, and Defendants should not have to expend resources responding to them. Defendants further request that the Tier 3 Individuals and their counsel be admonished to stop making filings in this matter, aside from their pending intervention motion, unless and until their motion to intervene is granted. *See Lattanzio v. Joyce*, 308 S.W.3d 723, 727 (Ky. App. 2010) (“In extreme cases where litigants have insisted on repeatedly abusing the legal process despite warnings from the court that such conduct will result in progressively harsher sanctions, courts have resorted to enjoining litigants from future filings”).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The above signature certifies that, on February 18, 2021, the foregoing was electronically filed with the Clerk of the Court using the KCOJ e-filing system and pursuant to Notices of E-Service served via email pursuant to CR 5.02(2), to the following:

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