

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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RICHMOND CHEMICAL CORPORATION,

Plaintiff,

v.

JULIO BAEZ,

Defendant.

CASE NO. 12-cv-6405

Judge: Matthew F. Kennelly

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**PLAINTIFF'S MOTION FOR RECONSIDERATION OF  
THE COURT'S ORDER OF OCTOBER 2, 2012**

Plaintiff Richmond Chemical Corporation hereby files this motion for reconsideration of the Court's Order of October 2, 2012. (ECF No. 8.) On September 20, 2012, the Court entered an Order directing Plaintiff to amend the Complaint on or before September 27, 2012 to describe complete diversity of citizenship. On October 2, 2012, the Court dismissed the Complaint because Plaintiff did not amend the Complaint as set forth in the September 20, 2012 Order.

Plaintiff respectfully requests that the Court reconsider its October 2, 2012 Order, reinstate this case and allow Plaintiff to file the amended complaint attached hereto, which includes allegations of complete diversity of citizenship. Plaintiff's request is based upon the fact that, for reasons unknown, undersigned counsel did not receive an electronic mail notification from the Court's ECF system of the Court's September 20, 2012. The message was instead captured by counsel's "spam" filter and not seen until the Court's October 2 Order issued.

Plaintiff did not amend his Complaint on or before September 27 due to this on or before September 27, 2012 because counsel was unaware of the order at the time it was entered. Plaintiff respectfully requests that this Court reconsider its October 2, 2012 Order, reinstate this case, and permit Plaintiff to file the Amended Complaint attached as an exhibit to this Motion.

### **LEGAL STANDARD**

Though a motion for reconsideration is not expressly authorized in the Federal Rules, “a district court has the inherent power to reconsider and modify its interlocutory orders prior to the entry of judgment...” *Smith v. Massachusetts*, 543 U.S. 462, 475 (2005) (Ginsburg, J., dissenting) (quoting *United States v. LoRusso*, 695 F.2d 45, 53 (2nd Cir. 1982)). A motion for reconsideration should be granted “to correct manifest errors of law or fact or to present newly discovered evidence.” *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir. 1988) (quoting *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987).

### **DISCUSSION**

This Court’s September 20, 2012 Order stated:

Order entry before Honorable Matthew F. Kennelly: This case was filed in federal court based on purported diversity of citizenship. The complaint, however, alleges only the residence of the defendant, not his state of citizenship. The two are not necessarily the same. Unless plaintiff files an amended complaint by 9/27/12 describing complete diversity of citizenship, the Court will dismiss the case.

The Order appears on the Court’s electronic docket. However, for reasons unknown, the electronic notification of this Order (ECF No. 7) but for reasons that are unclear was detained in counsel’s “spam” filter in the e-mail system for Plaintiff’s counsel. As a consequence, Plaintiff’s was unaware of the Order until the Court issued the October 2, 2012 Order dismissing the action for not filing an amended complaint (ECF No. 8). That message was delivered to counsel’s in-box in his e-mail account.

Upon seeing the October 2, 2012 Order, Plaintiff's counsel discovered that the September 20 Order was not delivered to his in-box. Counsel has taken action to assure that any notices from this Court will be directed to his "in" box. Plaintiff has also prepared the attached Amended Complaint in which it states that the Defendant is, upon information and belief, a citizen of the State of California.

Plaintiff did not timely comply with this Court's Order through this inadvertent error. Counsel has taken steps to assure that it does not recur. Plaintiff submits the proposed Amended Complaint to address the issue referenced in this Court's September 20, 2012 Order. Plaintiff respectfully requests that this Court reconsider its October 2, 2012 Order, reinstate this action, and grant Plaintiff leave to file the attached Amended Complaint.

### CONCLUSION

Plaintiff respectfully requests that this Court reconsider its October 2, 2012 Order, reinstate this action, grant Plaintiff leave to file the attached Amended Complaint, and grant any and all further relief that the Court deems to be reasonable and appropriate under the circumstances.

Respectfully submitted,

Richmond Chemical Corporation,

DATED: October 5, 2012

By: /s/ Paul Duffy  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 5, 2012, all individuals of record who are deemed to have consented to electronic service are being served true and correct copy of the foregoing documents, and all attachments and related documents, using the Court's ECF system.

s/ Paul A. Duffy