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11 UNITED STATES DISTRICT COURT

12 DISTRICT OF ARIZONA

13 JENNA MASSOLI p/k/a JENNA)
 14 JAMESON,)
 15)
 16) Plaintiff,)
 17)
 18) vs.)
 19) "REGAN MEDIA," and JUDITH)
 20) REGAN, an individual,)
 21)
 22) Defendants.)

No. CV 05-0854 PHX EHC

**MEMORANDUM IN SUPPORT
 OF DEFENDANTS/
 COUNTERCLAIMANTS'
 MOTION TO AMEND
 COUNTERCLAIM**

23 REGAN MEDIA, INC., a New York)
 24 corporation, and JUDITH REGAN, an)
 25 individual,)
 26)
 27) Defendants/Counterclaimants,)
 28)
 29) vs.)
 30) JENNA MASSOLI p/k/a JENNA)
 31) JAMESON, an individual,)
 32)
 33) Plaintiff/Counterdefendant,)
 34)
 35) and)
 36) JAY GRDINA, an individual,)
 37)
 38) Third-Party Counterdefendant.)

(Assigned to the Honorable
 Earl H. Carroll)

1 Defendants/Counterclaimants Regan Media, Inc. (“Regan Media”) and
2 Judith Regan (“Judith Regan”) (collectively, “Regan”) recently learned that
3 Plaintiff/Counterdefendant Jenna Massoli p/k/a Jenna Jameson (“Jameson”) used her
4 company, Dolce Amore, Inc. (“Dolce Amore”), to execute a contract with the A&E
5 Television Network (“A&E”). In light of Jameson’s belated disclosure of this fact, Regan
6 seeks leave to amend the Counterclaim to (a) join Dolce Amore as an additional
7 Counterdefendant for its intentional interference with the Jameson-Regan Media contract
8 at issue in this case, and (b) revise Regan’s claims based on Jameson’s recent disclosures.
9

10 **Procedural Background**

11
12 Jameson initiated this litigation seeking a declaration from the Court that her
13 participation in a reality television series produced by A&E is not a breach of her written
14 Agreement with Regan Media because Jameson’s negotiations with A&E allegedly pre-
15 dated the Agreement. Judith Regan and Regan Media counterclaimed for breach of the
16 April 1, 2004 Agreement between Regan Media and Jameson (the “Agreement”), in which
17 Jameson granted Regan rights to participate in any reality television series featuring
18 Jameson. Because Jameson admitted her participation in the A&E Project in her
19 pleadings, and because the Agreement could be construed and judgment entered entirely
20 as a matter of law, Regan filed a Rule 12(c) Motion for Judgment on the Pleadings on the
21 issue of Jameson’s liability for breach of the Agreement.
22

23
24 Instead of filing a “Response” to Regan’s Rule 12(c) Motion, Jameson filed
25 a Rule 56(f) Motion, claiming a need to take discovery on purported “ambiguities” in the
26

1 Agreement. In Jameson's Reply in support of her Rule 56(f) Motion, she disclosed for the
2 first time that a corporate entity, Dolce Amore, Inc., was the nominal party that executed
3 the A&E Contract, and asserted a new argument that the Agreement did not cover the
4 Agreement because the company, and not Jameson personally, entered into the contract
5 with A&E. [See July 18, 2005 Reply to Defendants/Counterclaimants' Response in
6 Opposition to Plaintiff/Counterdefendants' Rule 56(f) Motion at 3.] Jameson's Complaint
7 for Declaratory Relief nowhere mentioned the role played by her Colorado corporation,
8 Dolce Amore, in executing her contract with A&E. Indeed, only as a last-gasp attempt to
9 excuse her breach of the Agreement did Jameson reveal in her Reply the role of Dolce
10 Amore in undermining the parties' Agreement.
11

12 **Argument**

13
14 Regan seeks leave to file a Second Amended Counterclaim principally to
15 add Dolce Amore as a counterdefendant. Regan's request is timely, because Jameson only
16 recently revealed Dolce Amore's nominal role in executing the A&E Contract on July 18,
17 2005. This Motion to Amend is within the case schedule ordered by the Court, which
18 requires amendments to name additional parties by September 16, 2005. [See June 20,
19 2005 Order.]
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21
22 Motions to amend are governed under Rule 15, which provides that "a party
23 may amend the party's pleading only by leave of court or by written consent of the adverse
24 party; and leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). The
25 Ninth Circuit has interpreted the policy in favor of allowing amendment as one that should
26

1 be “applied with extreme liberality.” *Owens v. Kaiser Foundation Health Plan, Inc.*, 244
2 F.3d 708, 712 (9th Cir. 2001).

3 Granting Regan’s request for leave to amend would be fair in the
4 circumstances. When Regan responded to Jameson’s Complaint and filed their
5 Counterclaim, they had no knowledge of the existence of Dolce Amore. Although
6 Jameson originally initiated this litigation on the basis that *her* negotiations with A&E
7 allegedly pre-dated her Agreement with Regan Media, and that the A&E Contract was not
8 encompassed within her Agreement with Regan Media, she has now changed tack to argue
9 that it was Dolce Amore, not Jameson personally, who executed the A&E Contract.
10 Although this is a distinction without a difference, Regan seeks to add Dolce Amore as a
11 counterdefendant because the facts will establish that Jameson used Dolce Amore in a
12 knowing attempt to avoid her contractual obligations to Regan and Regan Media. In
13 addition, it appears Dolce Amore may have been paid money by A&E that represents the
14 damages to which Regan is entitled under the Agreement. Accordingly, Regan should be
15 allowed to join Dolce Amore as an additional counterdefendant.
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18

19 If the Court is inclined to grant Regan’s Motion to Amend, Regan will
20 withdraw the pending Rule 12(c) Motion for Judgment on the Pleadings. Because Regan’s
21 Second Amended Counterclaim would materially change the allegations against Jameson
22 and Jay Grdina, it would not be a prudent use of judicial resources to proceed with either
23 Regan’s Rule 12(c) Motion or Jameson’s Rule 56(f) Motion based on the prior pleadings.
24 The Court could therefore vacate the oral argument currently scheduled for October 3,
25
26

1 2005 on Jameson's Rule 56(f) Motion as moot. None of these actions would prejudice
2 Jameson, whose failure to reveal the conduct of Dolce Amore in her Complaint
3 necessitated Regan's Motion to Amend.

4 **Conclusion**

5 For the foregoing reasons, Defendants Regan Media, Inc. and Judith Regan
6 request that the Court grant their Motion to Amend Counterclaim.
7

8 Respectfully submitted this 9th day of September, 2005.

9 STEPTOE & JOHNSON LLP

10
11 By: /s/ David J. Bodney

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2005, I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electric Filing to the following CM/ECF

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