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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Telesaurus VPC, LLC, a Delaware
Limited Liability Company,

No. CV-07-1311-PHX-NVW

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Plaintiff,

ORDER

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vs.

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Randy Power, individually, and Radiolink
Corporation, an Arizona corporation,

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Defendants.

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Plaintiff Telesaurus VPC, LLC (“Telesaurus”) moves to amend its complaint (Doc. # 48). The proposed amended complaint names three new defendants: Patricia A. Powers, EWA Inc. (“EWA”), and EWA’s predecessor, Industrial Telecommunications Association Inc. (“ITA”). EWA opposes this amendment on the grounds that it would be futile to allow Telesaurus to name EWA as a defendant. For reasons explained below, the motion to amend will be denied.

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The Court’s June 6, 2008 order outlined the original allegations, so a brief summary will suffice here. RadioLink Corporation (“RadioLink”) hired EWA, a recognized frequency coordinator for the Federal Communications Commission (“FCC”), to apply for a broadcasting license. The FCC granted the requested license. As it turned out, Telesaurus had previously acquired a license to use the same frequencies authorized by RadioLink’s license. Eventually, the FCC realized there was a conflict and RadioLink’s license was

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1 revised. However, for some period of time, RadioLink utilized the frequencies licensed to
2 Telesaurus. Telesaurus seeks damages relating to that use. In its amended complaint,
3 Telesaurus seeks to add EWA as a defendant on the ground that EWA assisted RadioLink
4 in a fraudulent scheme to obtain and use the conflicting license.

5 To survive a motion to dismiss, a plaintiff must allege “enough facts to state a claim
6 to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1974
7 (2007). Moreover, Telesaurus’s claims are grounded in a course of fraudulent conduct and
8 must satisfy the heightened pleading standard of Fed. R. Civ. P. 9(b). *Vess v. Ciba-Geigy*
9 *Corp. USA*, 317 F.3d 1097, 1103-04 (9th Cir. 2003). The amended complaint does not meet
10 these standards with respect to EWA or its predecessor, ITA. Aside from conclusory
11 statements regarding EWA’s knowing participation in Telesaurus’s fraudulent scheme,
12 Telesaurus alleges no particular knowledge, incentive, or pattern of conduct on the part of
13 EWA that would make these claims plausible. EWA’s actions as a frequency coordinator,
14 standing alone, are “not suggestive of conspiracy.” *Twombly*, 127 S. Ct. at 1972. The
15 allegations fail to invest those actions with any plausible suggestion of unlawful behavior.
16 *See id.* at 1971.

17 Telesaurus also alleges that EWA knew of and assisted RadioLink’s conversion and
18 exploitation of the radio frequencies at issue. As before, Telesaurus has failed to plead any
19 particular facts to make this assertion plausible. The allegations do not suggest that EWA
20 had any ownership or control of the frequencies in question, nor do they suggest that EWA
21 derived any benefit from the use of the frequencies.

22 IT IS THEREFORE ORDERED that Plaintiff Telesaurus’s motion to amend the
23 complaint (Doc. # 48) is denied. Because the motion to amend is unopposed in its other
24 respects, Telesaurus may file a new amended complaint with those unopposed allegations by
25 October 10, 2008, without the allegations against EWA and ITA as defendants.

26 Dated: September 29, 2008.

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Neil V. Wake
United States District Judge