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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

PAMELA NEWPORT,
Plaintiff,
vs.
DELL INC., et al.,
Defendants.

No. CIV 08-096-TUC-CKJ (JCG)

ORDER

On August 21, 2008, Magistrate Jennifer C. Guerin issued a Report and Recommendation [Doc. # 63] in which she recommended Defendant QualxServ, LLC’s Motion to Dismiss [Doc. # 43] be granted. The magistrate judge advised the parties that written objections to the Report and Recommendation were to be filed within ten days of service of a copy of the Report and Recommendation pursuant to 28 U.S.C. § 636(b). Defendant has filed an objection. Plaintiff has not filed an objection and has not responded to Defendant’s objection.

Defendant QualxServ, LLC’s Objections

The magistrate judge has recommended that the Motion to Dismiss filed by Defendant QualxServ, LLC (“Qualserv”) be granted, but that the claims be dismissed with leave to amend. QualxServ asserts that the claims should be dismissed without leave to amend.

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In determining whether to permit Plaintiff Pamela Newport (“Newport”) the opportunity to again amend her complaint, the Court considers the delay caused by repeated amended complaints, prejudice to Defendants, futility, and bad faith. *See DCD Programs v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987); *Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994). The Court finds permitting Newport to again amend her complaint would cause further delay and would prejudice the Defendants. However, the Court also finds that there has been no bad faith. The Court also considers that Newport has already filed an Amended Complaint. *See Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 538 (9th Cir. 1989) (failure to cure deficiencies by previous amendments is factor to be considered); *Spano v. SAFECO Inc. Co. of America*, 215 F.R.D. 601 (D.Or. 2003), *aff’d*, — F.3d — (9th Cir. 2008).

However, the Court also considers whether further amendments would be futile. Qualxserv asserts that, because the juridical link doctrine is not applicable in this case and Fed.R.Civ.P. 20 does not involve a consideration of standing, Newport’s contract¹ and fraud claims should be dismissed without leave to amend. QualxServ agrees with the magistrate judge’s determination that the juridical link doctrine and Fed.R.Civ.P. 20 does not obviate the need for standing.

Under the juridical link doctrine, a “named plaintiff in a class action might be able to asserts claims against defendants with whom plaintiff has had no dealings in ‘situations in which all injuries are the result of a conspiracy or concerted schemes between the defendants at whose hands the class suffered injury’ or situations ‘in which all defendants are juridically

¹Newport has not objected to the magistrate judge’s conclusion that she did not have a contractual relationship with QualxServ. However, her response to the motion to dismiss asserts that this is a question of fact. Newport’s First Amended Complaint, however, does not set forth any basis to conclude that there was a contractual relationship between Newport and QualxServ.

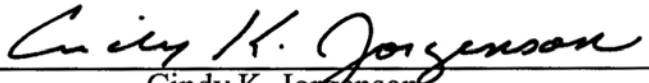
1 AMEND.

2 4. QualxServ is DISMISSED from this action.

3 DATED this 17th day of October, 2008.

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Cindy K. Jorgenson
United States District Judge

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