

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JOHN WARD, JR.

v.

CISCO SYSTEMS, INC AND
RICK FRENKEL

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§
§
§
§
§

C.A. NO. 08-4022
JURY TRIAL DEMANDED

CISCO SYSTEMS, INC.’S MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO PLAINTIFF’S FIRST AMENDED COMPLAINT AND COUNTERCLAIM

TO THE HONORABLE COURT:

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Defendant, Cisco Systems, Inc. (“Cisco”) respectfully moves this Court for entry of an Order granting it leave to file Cisco’s First Amended Answer to Plaintiff’s First Amended Complaint and Counterclaim, attached hereto as Exhibit A. In support of this motion, Cisco states as follows:

1. Cisco seeks leave to file an amended answer to clarify its contention that Texas substantive law governs Plaintiff’s claims, to affirmatively assert that neither the tort of outrage nor false light invasion of privacy are recognized by the State of Texas, and to set out the legal standard which must be met to attribute an employee’s actual malice to an employer, along with clarifications of a few answers to Plaintiff’s contentions.

2. A Court should grant leave to file an amended pleading absent a showing of prejudice, bad faith or undue delay. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Leave to amend should be freely given when justice so requires. Fed. R. Civ. P. 15(a)(2). There has been no showing of prejudice, bad faith or undue delay here, and therefore the Court should grant leave to file the amended pleading.

3. Cisco's motion is filed within the time period allowed for amending pleadings in the Court's Scheduling Order and therefore will cause no delay.

4. The amendment will not prejudice Plaintiff, is not brought in bad faith, and will not cause undue delay. The very facts set out in Plaintiff's amended complaint confirm Texas' significant relationship to the parties and the issues, including Plaintiff's residency, that he practices law in Texas, and that the events described in the allegedly defamatory articles took place in Texas.

5. This motion is being sought for a proper purpose, the defenses and other legal contentions asserted in the amended pleading are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or establishing new law, and the factual contentions and denials have evidentiary support.

WHEREFORE, Cisco Systems, Inc. respectfully requests that the Court enter an order granting it leave to file its First Amended Answer to Plaintiff's First Amended Complaint and Counterclaim.

Jackson Walker L.L.P.

By: /s/ Charles L. Babcock

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ATTORNEY FOR DEFENDANT
CISCO SYSTEMS, INC.

CERTIFICATE OF SERVICE

This is to certify that on this 19th day of October, 2009, a true and correct copy of the foregoing Cisco Systems, Inc.'s Original Answer to Plaintiff's First Amended Complaint was served electronically, upon:

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