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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HOPSCOTCH ADOPTIONS, et al., CASE NO. 1:09-cv-2101-MJS
 Plaintiffs, ORDER GRANTING MOTION TO FILE
 v. FIRST AMENDED COMPLAINT
 VANESSA KACHADURIAN, (ECF No. 124)
 Defendant.

I. INTRODUCTION; ISSUE

Plaintiffs Hopscotch Adoptions and Robin Sizemore (collectively "Plaintiffs") initiated this action with a December 2, 2009, complaint against Defendant Vanessa Kachadurian asserting violation of the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. §§ 1030 et seq., and state law causes of action for defamation, negligent misrepresentation, false light, tortious interference with contractual relations, and negligent interference with prospective business advantage. (Compl., ECF No. 1.) The claims arose out of allegedly false and inflammatory comments being made about Plaintiffs on various blogs and web sites. (Id.)

Now, some seventeen months into the case, Plaintiffs seek leave to file a First Amended Complaint which differs from the original in that it deletes the CFAA and negligent misrepresentation cause of action and purportedly "recasts" the facts asserted thereunder as new tortious interference with prospective advantage and invasion of privacy causes of action. Defendant has no objection to deletion of the two causes of action, but

1 does otherwise oppose the proposed amendment.

2 **II. LAW AND ANALYSIS**

3 The law governing amendment is not in dispute.

4 Under Federal Rules of Civil Procedure, Rule 15(a)(2), where, as here, a party's
5 time for amending a complaint as a matter of right has passed, the "party may amend its
6 pleading only with the opposing party's written consent or the court's leave. The court
7 should freely give leave when justice so requires." Bull v. City & County of San Francisco,
8 2010 U.S. Dist. LEXIS 93493 at *16-17 (N.D. Cal. Sept. 8, 2010). Indeed, since "... the
9 underlying purpose of Rule 15 [is] to facilitate decision on the merits, rather than on the
10 pleadings or technicalities...[its] policy of favoring amendments to pleadings should be
11 applied with 'extreme liberality.'" Eldridge v. Block, 832 F.2d 1132, 1135 (9th Cir. 1987) In
12 deciding whether to grant leave, the court should consider the following factors: bad faith,
13 undue delay, repeated failure to correct deficiencies by prior amendment, prejudice to the
14 opposing party, and potential futility. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186
15 & n.3 (9th Cir. 1987). Delay alone, without prejudice, bad faith or futility will not justify
16 denial of a motion to amend. Bowles v. Reade, 198 F.3d 752, 758 (9th Cir. 1999). The
17 non-moving party bears the burden of showing why leave to amend should not be granted.
18 Genetech, Inc. v. Abbott Labs., 127 F.R.D. 529, 530-31 (N.D. Cal. 1989).

19 Defendant argues, in essence, that: allowing the proposed amendment would permit
20 Plaintiff to allege, improperly, either new facts which arose after the complaint was filed or
21 pre-existing facts which could have, and should have, been alleged in the initial complaint;
22 that Plaintiff has not shown reason for the delay in seeking leave to amend; and, that
23 Defendant has been prejudiced by the delay. (Opp'n, ECF No. 129.)

24 A motion to amend is not the place to resolve factual disputes; Defendant's
25 objections to the factual basis for the amendment and/or the timing of the events giving rise
26 to the amendment will not be addressed here. The Court's review of the pleadings alone
27 suggest that the original and proposed claims arise out of the same facts, events, and
28 transactions.

1 Defendant's delay in seeking leave to amend is troubling and not well explained.
2 Plaintiff attributes the delay to Defendant.¹ Without assessing blame, the Court sees no
3 sign that anything of great value has been accomplished in this case since its initiation
4 some seventeen months ago. It does not appear that discovery has begun in earnest, if
5 at all. More than three months remain in which to conduct discovery into facts and
6 allegations. That should be adequate. (If, despite diligence, it proves inadequate, the
7 Court may entertain an appropriate motion to extend discovery.) The Court is unable to find
8 that allowing the amendment would prejudice Defendant. Without prejudice, the Court is
9 unwilling to find that the delay alone is sufficient to deny a motion to amend where the
10 amendment appears to be based on the same set of facts, events and transactions giving
11 rise to the original complaint.

12 **III. ORDER**

13 Accordingly, for the reasons set forth above, Plaintiff's Motion to File First Amended
14 Complaint is GRANTED. Plaintiff's proposed Verified First Amended Complaint for
15 Injunctive Relief and Damages (ECF. No. 124, Ex. A.) may be filed at this time. Defendant,
16 if she wishes, may stand on her original answer to the First Amended Complaint; in she
17 choses to do so, the new allegations in the First Amended Complaint will be deemed
18 denied.

19
20 IT IS SO ORDERED.

21 Dated: May 15, 2011

1st. Michael J. Song
UNITED STATES MAGISTRATE JUDGE

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25 ¹ Plaintiff does so in a manner the Court finds to be lacking in professionalism, counterproductive
26 and unacceptable. (Reply, Section II.A, ECF No. 130.) The parties previously were admonished about
27 such tactics. They **will not** be tolerated. The parties shall henceforth refrain from personal attacks or
28 characterization of their opponents and their opponents' motives and tactics. The Court is capable of
reaching its own conclusions as to the propriety of actions taken based on the objective facts presented; it
does not need, and will not accept, a party's use of pejorative, or any, adverbs or adjectives to describe
those actions.