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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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IKON OFFICE SOLUTIONS, INC.,  
Plaintiff,

NO. CIV. 2:10-1704 WBS KJM

v.

MEMORANDUM AND ORDER RE:  
MOTION TO STRIKE

MICHAEL REZENTE and CHRISTY  
FRIEND,  
Defendants.

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Plaintiff Ikon Office Solutions, Inc. ("Ikon") brought this action in the United States District Court for the Eastern District of Pennsylvania against defendants Michael Rezente and Christy Friend alleging breach of contract, misappropriation of trade secrets under the California Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426 et seq., interference with actual and prospective business relations, interference with contractual relations, and unfair competition in violation of California Civil Code §§ 17200, 17500, and 17508. (Compl. (Docket No. 1).)

1 The action was subsequently transferred to this court on the  
2 basis of improper venue. (Docket No. 37); 28 U.S.C. § 1406(a).  
3 Before the court is defendants' motion to strike plaintiff's  
4 First Amended Complaint ("FAC").

5 I. Factual and Procedural Background

6 Ikon sells, leases, and services office equipment and  
7 systems including copiers and printers, and provides services  
8 including technical support, document outsourcing, equipment  
9 maintenance, and network facilities management. (Compl. ¶ 2.)  
10 Defendants are both former employees of Ikon who worked in its  
11 Sacramento, California "Marketplace." (Id. ¶¶ 3, 6.) Rezente  
12 was an Area Sales Manager who resigned on July 31, 2009, and  
13 Friend was an Account Executive who resigned on July 13, 2009.  
14 (Id. ¶¶ 3, 6.) Plaintiff alleges that defendants now both work  
15 for Delta CopySystems, Inc. ("DCSI"), a direct competitor of  
16 plaintiff, and that defendants have violated their post-  
17 employment obligations to it by soliciting Ikon customers and  
18 employees and misappropriated confidential Ikon trade secrets  
19 and information. (Id. ¶¶ 5, 9-10.)

20 Plaintiff's verified Complaint was originally filed in  
21 the United States District Court for the Eastern District of  
22 Pennsylvania on September 15, 2009. (Docket No. 1.) That court  
23 granted plaintiff's motion for expedited discovery on September  
24 22, 2009 (Docket No. 4) and granted defendants' motion to  
25 transfer venue to the Eastern District of California on February  
26 3, 2010. (Docket No. 37.) The case was transferred on July 2,  
27 2010 (Docket No. 44), after the Court of Appeals for the Third  
28 Circuit denied plaintiff's petition for a writ of mandamus.

1 (Docket No. 43.)

2 Plaintiff filed its FAC immediately upon transfer to  
3 this court on July 2, 2010. (Docket No. 45.) Plaintiff's FAC no  
4 longer seeks preliminary injunctive relief, no longer asserts  
5 causes of action for breach of contract, interference with actual  
6 business relations, or interference with contractual relations,  
7 and no longer includes original Exhibits A and B which were  
8 allegedly copies of defendants' signed non-compete agreements.  
9 (Compare Compl. with FAC.) It also adds a cause of action for  
10 breach of fiduciary duty and the duty of loyalty and includes new  
11 exhibits A through D-2. (See FAC.)

12 Presently before the court are defendants' motion to  
13 strike plaintiff's FAC under Federal Rule of Civil Procedure  
14 12(f) for failure to obtain their consent or the court's leave in  
15 violation of Rule 15(a)(2).

16 II. Discussion

17 Pursuant to Federal Rule of Civil Procedure 12(f), a  
18 court "may strike from a pleading an insufficient defense or any  
19 redundant, immaterial, impertinent, or scandalous matter."  
20 Defendants move to strike on the grounds that plaintiff failed to  
21 obtain defendants' consent or leave of the court as required  
22 under Rule 15(a)(2). Plaintiff's Complaint was filed September  
23 15, 2009, defendants filed a motion to dismiss for lack of  
24 jurisdiction or to transfer venue of November 11, 2009, and  
25 plaintiff filed its FAC on July 2, 2010. Defendants also argue  
26 that they served plaintiff with the motion for sanctions pursuant  
27 to Rule 11(c)(2)--filed with the court on July 16, 2010--on  
28 February 11, 2010.

1 Under the version of Rule 15 in place at the time  
2 plaintiff filed its Complaint, “[a] party may amend its pleading  
3 once as a matter of course . . . before being served with a  
4 responsive pleading.” A motion to dismiss pursuant to Rule 12 is  
5 not considered a “responsive pleading” for Rule 15 purposes, and  
6 plaintiffs could freely amend their complaints once as a matter  
7 of course after being served with a motion to dismiss in lieu of  
8 an answer. Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 n.  
9 3 (9th Cir. 2000) (citing Tahoe-Sierra Pres. Council, Inc. v.  
10 Tahoe Reg’l Planning Agency, 216 F.3d 764, 788 (9th Cir. 2000)).  
11 Because defendants’ November 11, 2009 motion to dismiss for lack  
12 of jurisdiction was served while the old version of Rule 15 was  
13 still in effect, this motion did not terminate plaintiff’s right  
14 to amend its Complaint as a matter of course under the old Rule  
15 15.

16 Rule 15 was amended on December 1, 2009 to provide:

17 A party may amend its pleading once as a matter of course  
18 within:

- 19 (A) 21 days after serving it; or  
20 (B) if the pleading is one to which a responsive pleading  
is required, 21 days after service of a responsive  
pleading or 21 days after service of a motion under Rule  
12(b), (e), or (f), whichever is earlier.

21 Significantly, Rule 12 motions to dismiss now trigger the clock  
22 for plaintiffs seeking to amend their Complaint as a matter of  
23 course. By order of the Supreme Court dated March 26, 2009, the  
24 amendment should “govern in all proceedings thereafter commenced  
25 and, insofar as just and practicable, all proceedings then  
26 pending.” Order, 2009 U.S. Order 17 (Mar. 26, 2009) (emphasis  
27 added). Because retroactively applying the amended version of  
28 Rule 15 to defendants’ November 11, 2009 motion to dismiss would

1 not be just in this case, the version of Rule 15 then in-effect  
2 shall apply to defendants' motion to dismiss.

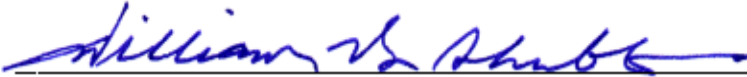
3 Defendants also assert that they served plaintiff with  
4 their motion for sanctions seeking dismissal on February 11, 2010  
5 and that, under Rule 11 and the version of Rule 15 now in effect,  
6 plaintiff had until March 4, 2010 to file its FAC. See Fed. R.  
7 Civ. P. 11(c)(2) (stating that a party must serve the motion to  
8 the party under Rule 5 but not file or present it to the court  
9 until the party has had 21 days after service to withdraw or  
10 correct the alleged sanctionable conduct), 15(a)(1). Rule 7(a)  
11 outlines the seven "pleadings" allowed in federal court, none of  
12 which is a motion for sanctions. Defendants fail to provide any  
13 law that holds that a Rule 11 motion for sanctions is a  
14 "responsive pleading" for Rule 15(a) purposes such that it starts  
15 the twenty-one day clock by which a plaintiff may amend its  
16 complaint as a matter of course. As plaintiff filed its FAC  
17 before defendants filed their Rule 12(f) motion to strike or  
18 their Answer (Docket No. 48), plaintiff was entitled to amend  
19 once as a matter of course pursuant to Rule 15(a)(1)(B).  
20 Defendants' motion to strike will accordingly be denied.

21 IT IS THEREFORE ORDERED that defendants' motion to  
22 strike be, and the same hereby is, DENIED.

23 Pursuant the stipulation of the parties, IT IS FURTHER  
24 ORDERED that all orders entered in this case by the United States  
25 District Court for the Eastern District of Pennsylvania before  
26 the matter was transferred to this court, other than the order of  
27 transfer itself, are hereby VACATED and SET ASIDE.

1 DATED: September 13, 2010

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WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE