

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-PASS TECHNOLOGIES,

No. C-09-5967 EMC

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**MOSES & SINGER, LLP, *et al.*,

Defendants.

(Docket No. 102)

Pending before the Court is Plaintiff's Motion for Leave to File a First Amended Complaint. Docket No. 102. At the parties' June 22, 2011 Case Management Conference, the Court instructed Plaintiff to file an amended complaint asserting its basis for diversity jurisdiction within 20 days and Defendants to file their motion to dismiss 30 days thereafter. Docket No. 98. The Court indicated its preference to expedite the process so that it could adjudicate issues such as estoppel, jurisdiction under 28 U.S.C. § 1332 or § 1338, and any other arguments or defenses Defendants intend to raise, together via a motion to dismiss and, as necessary, motion to say or motion to strike. Plaintiff now seeks to make additional amendments to its asserted basis for federal question jurisdiction. Because federal question jurisdiction has always been in dispute, and given Rule 15's liberality with regard to leave to amend, Fed. R. Civ. P. 15(a), the Court sees no irreversible prejudice to Defendants if Plaintiff is granted leave to amend before the Court adjudicates the anticipated motion to dismiss.

Therefore, having considered the parties' submissions, the Court deems the matter suitable for decision on the papers and hereby orders as follows:


- (1) The First Amended Complaint attached to the Motion as Exhibit "B" is deemed filed as of the date this order is entered. The Court grants leave to amend without prejudice to any of Defendants' claims regarding estoppel, jurisdiction, or any other bases to dismiss or strike portions of the complaint or stay this matter.
- (2) Plaintiff is not required to personally serve the Defendants with the First Amended Complaint. Service of the First Amended Complaint is deemed served as of the date this order is entered.
- (3) Defendants are required to file a response to the First Amended Complaint no later than September 12, 2011.
- (4) Further status is set for November 7, 2011, at 10:30 a.m. An updated joint Further Status Conference statement shall be filed by October 31, 2011.

The hearing on the motion for leave to file First Amended Complaint set for August 19, 2011 is **VACATED**.

This order disposes of Docket No. 102.

IT IS SO ORDERED.

Dated: August 12, 2011


EDWARD M. CHEN
United States District Judge