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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER JONES,

Plaintiff,

v.

MARRIOTT HOTEL SERVICES, INC.,

Defendant.

No. C 12-00587 WHA

**ORDER GRANTING IN PART  
LEAVE TO AMEND AND  
RE-FILE COMPLAINT  
AND VACATING HEARING**

**INTRODUCTION**

In this employment action, plaintiff sues defendant for alleged violations of the Uniformed Services Employment and Reemployment Rights Act (“USERRA”). Plaintiff files a motion for leave to amend his original complaint to add two more defendants. To the extent below, the motion is **GRANTED IN PART AND DENIED IN PART**.

**STATEMENT**

Plaintiff Christopher Jones, a Marine Corps veteran, is a resident of California (Compl. ¶¶ 1, 10). Plaintiff originally named Marriott International, Inc. (“International”), a corporation licensed to conduct business in California, as defendant (*id.* at ¶ 2). Plaintiff began working for International in January 2001 (*id.* at ¶ 13). In December 2008, plaintiff received military orders to active duty and notified International accordingly (*id.* at ¶ 15). That period of service ended in October 2009, and plaintiff then notified International of his intent to return to work a month later (*id.* at ¶¶ 17–18). Even after plaintiff repeatedly informed International of his alleged status

1 and rights under USERRA, International refused to reemploy him or reinstate his benefits  
2 (*id.* at ¶¶ 19–22). In January 2010, International allegedly made a “final decision” to deny  
3 plaintiff reemployment and asked him to waive his legal rights under USERRA (*id.* at ¶ 23).  
4 In February 2012, plaintiff filed his original complaint alleging several different violations of  
5 USERRA (*id.* at ¶¶ 25–37).

6 In March 2012, counsel for International and Marriott Hotel Services, Inc. (“Hotel  
7 Services”) submitted a stipulation that the original complaint’s caption be modified “to correctly  
8 reflect Marriott Hotel Services, Inc. [not International], as the proper [d]efendant[.]” (Dkt No. 9).  
9 The stipulation was granted (Dkt. No. 12 at 2–3) and Hotel Services is now the sole defendant in  
10 this action.

11 In May 2012, the undersigned judge issued a case management order: “Leave to add  
12 any new parties or pleading amendments must be sought by **JULY 31, 2012** (Dkt. No. 29 at ¶ 2)  
13 (emphasis in original). On July 29, 2012, plaintiff (without seeking leave) filed an amended  
14 complaint naming International, Hotel Services, and J.W. Marriott, Jr. as defendants. Hotel  
15 Services is a corporation licensed to conduct business in California and J.W. Marriott Jr. is  
16 the chairman and CEO of International (Dkt. No. 32 at ¶ 2–4). About half a year after filing  
17 the amended complaint without leave of court, plaintiff now moves for leave to file an amended  
18 complaint.

### 19 ANALYSIS

20 Plaintiff asserts his right to amend pursuant to FRCP 15(a)(2), arguing that no prejudice  
21 will result from granting him leave to include International and J.W. Marriott, Jr. as defendants.  
22 Defendant argues that leave should be denied because plaintiff’s first amended complaint was  
23 filed without defendant’s consent or leave of court and should be considered a legal nullity;  
24 plaintiff cannot establish good cause for modifying this court’s case management order; and  
25 granting leave to amend would significantly prejudice Hotel Services, International, and J.W.  
26 Marriott, Jr.

1           **1.       LEGAL STANDARD.**

2           Aside from amendments as a matter of course, “a party may amend its pleading only  
3 with the opposing party’s written consent or the court’s leave” though “[t]he court should freely  
4 give leave when justice so requires.” FRCP 15(a)(2). But once a case management order sets  
5 a deadline for amendments and that deadline passes, FRCP 16’s standard supplants that  
6 of FRCP(15)(a); to allow an untimely amendment, the case management order must be modified,  
7 requiring leave of court at its discretion and a showing of “good cause” by the moving party.  
8 *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294–95 (9th Cir. 2000) (citing FRCP 16).  
9 The good cause standard “primarily considers the diligence of the party seeking the  
10 amendment.” *Id.* at 1294 (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609  
11 (9th Cir. 1992) (internal quotation marks omitted)).

12           **2.       GOOD CAUSE.**

13           Defendant convincingly argues that plaintiff fails to show good cause justifying a  
14 modification to the case management order. *First*, plaintiff’s counsel waited at least five months  
15 after improperly filing the first amended complaint to file this motion even after defendant’s  
16 counsel informed him of his error. *Second*, months before the case management order’s  
17 deadline, plaintiff already knew or should have known of at least five of the six facts used to  
18 justify International’s inclusion as defendant (Dkt. No. 55 at 3–4). *Third*, plaintiff’s counsel tries  
19 to pass off an inapposite District of Northern Mariana Islands decision as binding Ninth Circuit  
20 authority. Nevertheless, *Aldan v. World Corp.*’s ruling that counsel’s good faith belief in  
21 imminent settlement qualifies as sufficient good cause can be distinguished here. An essential  
22 part of the ruling in *Aldan v. World Corp.* was that *both* parties expected early settlement.  
23 267 F.R.D. 346, 358 (D.N. Mar. 1, 2010). Here, plaintiff’s counsel offers a declaration stating  
24 that he thought the case would be resolved early (Dkt. No. 60, Second Jarrard Decl. at ¶ 3), but  
25 offers no convincing evidence that opposing counsel shared his view. Furthermore, notification  
26 of the parties’ failure to settle was filed in October 5, 2012 (Dkt. No. 34), yet plaintiff’s counsel  
27 waited another three months to file this motion.  
28

1           Despite plaintiff’s counsel’s missteps, this Court will exercise its discretion to allow  
2 plaintiff to file an amended complaint for the reasons and to the extent stated below.

3           **3.       DEFENDANT FAILED TO FILE A TIMELY OBJECTION.**

4           Plaintiff violated the case management order by not seeking leave to file his first  
5 amended complaint. Plaintiff’s counsel was also derelict for failing to serve either International  
6 or J.W. Marriott, Jr. The record shows that neither of the newly proposed defendants waived  
7 service, rendering plaintiff’s premature complaint a dead document within the court’s files.  
8 Therefore, that first amended complaint filed on July 29, 2012, is unauthorized and will be  
9 struck. The undersigned judge is disappointed in plaintiff’s counsel for failing to properly attend  
10 to these details.

11           Neither is defendant’s counsel free from blame. Defendant’s counsel admits to knowing  
12 that plaintiff’s first amended complaint was improperly filed, yet she failed to raise a timely  
13 objection. Electronic communications between counsel regarding civil procedure do not qualify  
14 as legal objections. Defendant’s counsel’s failure to timely object could arguably be considered  
15 a waiver, and plaintiff could arguably have so interpreted and relied accordingly.

16           This order will not allow J.W. Marriott, Jr. to be added as a defendant. Plaintiff offers  
17 no legitimate or plausible justification for doing so. J.W. Marriott, Jr. is not plaintiff’s employer.  
18 The harassment potential of J.W. Marriott Jr.’s inclusion is too high while his connection to this  
19 action is too tenuous. This is beyond the pale, and this action is too far along to be adding the  
20 top executive of companies as defendants.

21           This order will allow the inclusion of International, however, because plaintiff has  
22 sufficiently shown that International could plausibly be plaintiff’s employer. Again, plaintiff’s  
23 new amended complaint may only add International, and not J.W. Marriott, Jr., as an additional  
24 defendant.

25           The amended complaint will not unduly prejudice International. *First*, it cannot  
26 reasonably claim lack of notice because it was the originally-named defendant with the same  
27 counsel as Hotel Services, and defendant’s counsel apparently filed its opposition to this motion  
28 on behalf of Hotel Services, International, and J.W. Marriott, Jr. *Second*, if and when

1 International is properly served, it may request adjustments to the case management order.  
2 And *third*, this order will allow International to file its own motion for summary judgment by  
3 **JUNE 13, 2013**. Plaintiff's counsel must serve International within fourteen calendar days of  
4 filing the new amended complaint, while being mindful that defendant's counsel does not have  
5 to accept service on International's behalf.

6 **CONCLUSION**

7 To the extent above, plaintiff's motion for leave to amend his complaint is **GRANTED IN**  
8 **PART AND DENIED IN PART**. Plaintiff may only amend and re-file a complaint adding  
9 International, but not J.W. Marriott, Jr., as a defendant. The answer will be due twenty days  
10 after service of the summon and complaint. The hearing on February 21, 2013, is **VACATED**.

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12 **IT IS SO ORDERED.**

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14 Dated: February 14, 2013.

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17 WILLIAM ALSUP  
18 UNITED STATES DISTRICT JUDGE  
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