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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHNNY BOYD,
Plaintiff,

v.

AVANQUEST NORTH AMERICA INC,
Defendant.

Case No. [12-cv-04391-WHO](#)

**ORDER DENYING DEFENDANT'S
APPLICATION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 166

Defendant Avanquest North America Inc. (“Avanquest”) requests leave to file a motion to reconsider this court’s denial of Avanquest’s motions to dismiss and to enforce the Stipulation for Voluntary Dismissal (“Voluntary Dismissal”). Defendant bases this motion on a “manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.” N.D. Cal. Civ. L.R. 7-9(b)(3).

In repeating the arguments that it made in its motions to dismiss and to enforce the Voluntary Dismissal, Avanquest violates Civil Local Rule 7-9(c) and simply disputes the conclusions that the Court made in its October 14, 2014 order. *See* N.D. Cal. Civ. L.R. 7-9(c) (“No motion for leave to file a motion for reconsideration may repeat any oral or written argument made by the applying party in support of or in opposition to the interlocutory order which the party now seeks to have reconsidered. Any party who violates this restriction shall be subject to appropriate sanctions.”). I DENY Avanquest’s application for leave to file a motion for reconsideration.

DISCUSSION

Every argument that Avanquest advances in its motion for reconsideration was raised in its briefs regarding the motion to dismiss and the motion to enforce the Voluntary Dismissal. It does not introduce any new facts or law, but instead bases its argument on “the ground that the Court’s

1 order relies on factual and procedural findings that cannot be reconciled with the record placed
2 before the Court.” Application for Leave to File Mot. at 1-2 (Dkt. No. 166).

3 First, Avanquest takes issue with the fact that Boyd did not file a formal motion for leave
4 to amend. Mot. at 2 (Dkt. No. 166-2). But it is within a district court’s discretion to “construe
5 other filings, including oppositions to motions, as motions to amend where amendment would be
6 proper.” *Grisham v. Philip Morris, Inc.*, 670 F. Supp. 2d 1014, 1022 (C.D. Cal. 2009).

7 Second, Avanquest once again emphasizes the unreasonableness of Boyd’s delay in
8 discovering that System Suite, and not Fix-It, was on his computer, arguing that the record cannot
9 be reconciled with this Court’s conclusion that “Plaintiffs were not dilatory.” *See* Mot. at 1-2, 5-
10 7.¹ As I stated in the order, “the unusual circumstance that the identical claims Boyd seeks to
11 litigate have been at issue throughout the litigation, as well as the fact that his mistake was clearly
12 inadvertent and there will be no impact on the trial date” satisfies the requirements of Federal
13 Rules of Civil Procedure 15 and 16. Order at 6 (Dkt. No. 163). Once again, I reject the contention
14 that Boyd’s mistake in the earlier stages of this litigation amounts to a lack of diligence in his
15 moving to amend the pleadings. Avanquest has not refuted my conclusion that the prejudice it
16 suffers results from the past proceedings, and not from granting Boyd leave to amend.² Its
17 argument at this stage is misplaced.

18 Finally, Avanquest asserts that “[n]o authority is found for the Court’s exercise of
19 purported discretion to change the terms of a binding stipulation, negotiated by the parties through
20 counsel and filed with the Court...” Mot. at 13. Avanquest persists in advancing a misguided
21 interpretation of the plain language of the Voluntary Dismissal, which clearly provides that claims
22 relating to System Suite are dismissed *without prejudice*. Order at 4. The fact that the Voluntary
23 Dismissal states that the System Suite claims “shall no longer be at issue in this action” is

24 _____
25 ¹ Avanquest also discusses a case filed against it by plaintiff’s counsel in Illinois, presumably in
26 order to demonstrate bad faith and show that plaintiff can file another lawsuit instead of amending
27 Boyd’s complaint. *See* Dkt. No. 166-4; Mot. at 8. But the fact that plaintiff’s counsel may file
28 another suit relating to System Suite is not at issue, and I decline to make an inference of bad faith
in this case from the fact that another lawsuit was filed.

² Furthermore, Avanquest largely premises its argument of “grievous[] prejudice” on the fact that
the parties contracted to dismiss all claims relating to System Suite. Application at 2; Mot. at 14-
16. As discussed later, I do not find this argument to be persuasive.

1 consistent with the fact that Worley had the only claims involving System Suite at the time; there
2 is no wording that the dismissal was without leave to amend for Boyd, who at that point was
3 unaware of his claim against System Suite. Dkt. No. 143 at 1-2. The language in the Voluntary
4 Dismissal does not preclude Boyd from amending his pleadings to include claims relating to
5 System Suite.³ Therefore, there was no error in the order denying Avanquest’s motion to enforce
6 the Voluntary Dismissal.

7 **CONCLUSION**

8 Avanquest’s motion for reconsideration is nothing more than a repetition of its assertions
9 in its motions to dismiss and for enforcement of the Voluntary Dismissal that I denied on October
10 14, 2014. *See* Dkt. Nos. 144, 151, 163. As discussed in that order, these arguments are not
11 persuasive. Avanquest’s motion violates Civil Local Rule 7-9(c) and is DENIED.

12 **IT IS SO ORDERED.**

13 Dated: November 10, 2014



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WILLIAM H. ORRICK
United States District Judge

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³ Avanquest’s repeated arguments that it would not have agreed to the Voluntary Dismissal if
26 Boyd could re-plead claims relating to System Suite software, and that it was “deprived . . . of its
27 entitlement to litigate its right to compensation for having defended the action to date,” *see* Mot. at
28 14-15, are irrelevant. If Avanquest had been so adamant about dismissing with prejudice and
without leave to amend, it should have ensured that those terms were included in the Voluntary
Dismissal. It is not the court’s fault that Avanquest negotiated an agreement that allowed Boyd to
re-plead claims relating to System Suite while preventing it from seeking fees and costs related to
the dismissal. Avanquest’s argument of prejudice on this basis fails. *See* Mot. at 14-16.