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UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

MARK MOGEL,

No. C 13-01646 LB

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND AND ADD
PARTIES**

KATHLEEN HANNI,

Defendant.

[ECF No. 34]

On April 11, 2013, *pro se* Plaintiff Mark Mogel filed a complaint against Defendant Kathleen Hanni alleging impersonation through an internet website, "conspiracy," and defamation. Complaint, ECF No. 1 at 7-11.¹ After Hanni answered the complaint, the court held an initial case management conference and set November 25, 2013 as the deadline for Mogel to seek leave to amend the complaint or add parties. In the pending motion, which was filed on or just after the deadline, Mogel seeks leave to file an amended complaint that would name additional defendants and add a claim for invasion of privacy. *See* Motion and Proposed First Amended Complaint, ECF No. 34. The court finds this matter suitable for disposition without a hearing under Civil Local Rule 7-1(b) and GRANTS Mogel's request to file the Proposed First Amended Complaint.

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document.

1
2 **STATEMENT**

3 In his original complaint, Mogel alleges that Defendant Kathleen Hanni is liable for conspiracy
4 and defamation both “individually and as executive director for the COALITION FOR AN
5 AIRLINE PASSENGER’S BILL OF RIGHTS, a/k/a FLYERSRIGHTS.ORG, and as director for the
6 FLYERS RIGHTS EDUCATION AND ASSISTANCE CORPORATION, and as owner-operator of
7 KATE HANNI REAL ESTATE.” *See* Complaint at 1. Mogel alleges that from July 2007 to August
8 2009, he and Hanni engaged in an extra-marital affair. Complaint at 3-5. Both during and after the
9 affair, Hanni defamed Mogel by falsely telling associates that Mogel “drugged and raped her after
10 she was caught spending the night with” him. *Id.* at 4. Hanni also filed a false police report that
11 accused Mogel of hacking her computer, stealing a sex video, and attempting to extort money from
12 her. *Id.* Hanni filed a lawsuit against Delta Airlines based on similar allegations of computer
13 hacking and extortion. *Id.* at 5. In an article published in Travel Weekly, a national travel
14 publication, Hanni accused Mogel of being involved in that conspiracy. *Id.* The FBI and other law
15 enforcement agencies investigated the allegations and concluded they were fabricated. *Id.* at 5-6.
16 Hanni subsequently dismissed her lawsuit against Delta two weeks before Mogel’s deposition. *Id.* at
17 6. In order to clear his name, Mogel published a book titled “Diverted: High Fliers and Frequent
Liars,” which was published in March 2012. *Id.*

18 Beginning on or about April 12, 2012, Hanni acquired the websites markmogel.com and
19 marksmogel.blogspot.com, on which she impersonated Mogel and made false allegations about him
20 and his book. *Id.* at 7. Around the same time, Hanni also acquired the e-mail address
21 markmogel@gmail.com, which she used to impersonate Mogel and send e-mail messages to
22 reporters, attorneys, and private individuals, directing them to the markmogel.com website. *Id.* at 7-
23 8. Hanni also conspired with third parties to post false, defamatory allegations and book reviews on
24 Amazon.com. Finally, on May 15 or 16, 2012, Hanni acquired the website diverted-high-flyers-and-
25 frequent-liars-review.com, on which she published additional defamatory comments. *Id.*

26 Hanni answered the complaint on August 22, 2013. *See* ECF No. 15. The court held an initial
27 case management conference on October 24, 2013. *See* Minute Entry, ECF No. 30. On October 31,
28 2013, the court issued a Case Management and Pretrial Order that set November 25, 2013 as the

1 deadline to seek leave to add new parties or amend the pleadings. *See* CMC Order, ECF No. 33 at 2.

2 On December 3, 2013, Mogel filed² a motion for leave to file an amended complaint along with a
3 copy of his proposed first amended complaint (“PFAC”). *See* Motion, ECF No. 34.

4 There are three main differences between the PFAC and the original complaint. First, the PFAC
5 names as defendants the Coalition for an Airline Passengers Bill of rights, LLC and the FlyersRights
6 Education and Assistance Corporation (collectively, the “Organization Defendants”). *See* PFAC,
7 ECF No. 34 at 6. In contrast, Hanni is the only defendant named in the original complaint
8 (individually and in her capacities in the Organization Defendants and Kate Hanni Real Estate).
9 *Compare* PFAC, *with* Complaint, ECF No. 1 at 1. Second, the PFAC relies on an additional exhibit
10 that Mogel contends shows that the Coalition for an Airline Passengers’ Bill of Rights owned the
11 markmogel.com domain. Motion at 2. Finally, the PFAC includes an additional claim for invasion
12 of privacy. *See* PFAC ¶¶ 63-72.

13 ANALYSIS

14 Hanni opposes the motion to amend, arguing that it is untimely and legally deficient and she
15 would suffer prejudice as a result of the amendment. *See* Opp’n, ECF No. 37.

16 Under Federal Rule of Civil Procedure 15(a), leave to amend “shall be freely given when justice
17 so requires.” Fed. R. Civ. P. 15(a); *see Sonoma Cnty. Ass’n of Retired Employees v. Sonoma Cnty.*,
18 708 F.3d 1109, 1118 (9th Cir. 2013). Because “Rule 15 favors a liberal policy towards amendment,
19 the nonmoving party bears the burden of demonstrating why leave to amend should not be granted.”
20 *Genentech, Inc. v. Abbott Laboratories*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989) (citation omitted).
21 Courts generally consider five factors when assessing the propriety of a motion for leave to amend:
22 undue delay, bad faith, futility of amendment, prejudice to the opposing party and whether the party
23 has previously amended the pleadings. *Ahlmeier v. Nev. Sys. of Higher Educ.*, 555 F.3d 1051, 1055
24 n.3 (9th Cir. 2009).

25 Where a party seeks leave to amend after the date specified in a scheduling order, Rule 16(b)
26 also applies. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). Under
27

28 ² As discussed below, the parties dispute the actual filing date.

1 Rule 16(b), “[a] schedule shall not be modified except upon a showing of good cause and by leave
2 of the district judge.” *Id.*; *see* Fed. R. Civ. P. 16(b)(4). Therefore, a party seeking to amend a
3 pleading after the date specified in a scheduling order must first show “good cause” for the
4 amendment under Rule 16(b), and second, if good cause is shown, the party must demonstrate that
5 the amendment is proper under Rule 15. *Id.*

6 In order to determine whether good cause exists to modify the scheduling order, courts focus on
7 the reasonable diligence of the moving party. *See Noyes v. Kelly Servs.*, 488 F.3d 1163, 1174 n.6
8 (9th Cir. 2007); *see also Johnson*, 975 F.2d at 609 (stating that “carelessness is not compatible with
9 a finding of diligence and offers no reason for a grant of relief” under Rule 16(b); adding that “the
10 existence or degree of prejudice to the party opposing the modification might supply additional
11 reasons to deny a motion, [but] the focus of the inquiry is upon the moving party’s reasons for
12 seeking modification”). “If that party was not diligent, the inquiry should end.” *Johnson*, 975 F.2d
13 at 609.

14 The parties dispute whether Mogel’s motion was filed on or after the November 25 deadline in
15 the court’s scheduling order. *See* Opp’n at 2; Reply at 2, 6-8. Hanni points out that the docket
16 shows that the motion was filed on December 3, 2013. *See* Docket. In reply, however, Mogel
17 argues that FedEx delivered his motion to the Clerk’s Office by the November 25 deadline and he
18 attaches a FedEx proof-of-delivery document that supports his argument. *See* Reply at 8. The court
19 accepts Mogel’s evidence showing that his motion was timely delivered to the clerk’s office but not
20 posted to ECF until a later date.³ Accordingly, the court finds that the liberal Rule 15(a) standard
21 applies.

22 Even if Mogel had not filed his motion to amend until December 3, 2013, the court would find
23 that he acted with reasonable diligence in seeking leave to amend. Mogel argues that he did not
24 discover the basis for adding the claim against the Organization Defendants until November 17,
25 2013 and he acted quickly thereafter. *See* Reply at 1-2. Given that this case is still in the early

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27 ³ It also appears that Mogel’s reply brief was not immediately posted to the docket. To
28 prevent this in the future, Mogel should take care to mark the courtesy copies of his filings as
“Chambers Copy.” Civil Local Rule 5-2(b). The court also would likely grant a motion to permit
Mogel to file electronically, should he so request.

1 stages of litigation, Mogel's representation is sufficient.

2 Under the Rule 15(a) standard, Hanni fails to meet her burden of showing why leave to amend
3 should not be granted. She first argues that Mogel's motion fails to state with particularity the
4 grounds for seeking leave to amend and does not technically comply with the local rules because he
5 did not notice a hearing date. Opp'n at 3. The court disagrees. Mogel's motion explains why he
6 seeks to add the Organization Defendants to the case and provides context for his allegations.
7 *See Motion, passim.* The new exhibit further supports those allegations. *See ECF No. 34 at 24.*
8 Finally, the court is unwilling to rely on a minor technical deficiency to deny a motion to amend
9 filed early in the case by a *pro se* litigant. Such an error falls well within the leeway that federal
10 courts give to *pro se* litigants.

11 Hanni also argues that adding two parties will unnecessarily delay the case and increase costs.
12 Hanni's arguments are speculative and unsupported by factual detail or legal authority. The court
13 finds no evidence of prejudice on this record. Accordingly, the court grants Mogel's motion for
14 leave to file an amended complaint.

15 **CONCLUSION**

16 For the reasons discussed, the court **GRANTS** Mogel's motion to file the proposed First
17 Amended Complaint. Mogel may file a complete copy of the amended complaint within the next 14
18 days. The court vacates the January 16, 2014 hearing date.

19 **IT IS SO ORDERED.**

20 Dated: January 10, 2014



21 LAUREL BEELER
22 United States Magistrate Judge

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