

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMIE MENDEZ,

No. C-13-5914 EMC

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE A
SECOND AMENDED COMPLAINT**

C-TWO GROUP, INC., *et al.*,

(Docket No. 39)

Defendants.

Plaintiff Jamie Mendez has filed a class action asserting a claim pursuant to the Telephone Consumer Protection Act ("TCPA"). *See* 47 U.S.C. § 227. The Court previously dismissed one of the defendants sued (mobileStorm, Inc.), thus leaving C-Two Group, Inc. as the only named defendant. *See* Docket No. 36. Ms. Mendez now moves for leave to file a second amended complaint. More specifically, Ms. Mendez asks to add a new defendant to the case, C&L Associates. C-Two has not opposed Ms. Mendez's motion.

The Court hereby **VACATES** the hearing on Ms. Mendez's motion and further **GRANTS** the motion. Under Federal Rule of Civil Procedure 15, a "court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). In general, "[f]ive factors are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint." *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). These factors weigh in favor of amendment in the case at hand. For example, Ms. Mendez's proposed amendment does not appear to have been made in bad faith. C-Two only recently identified C&L as the owner of the Infusion Lounge, whose services were promoted in the text message that Ms. Mendez claims was

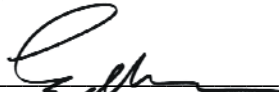
1 not solicited and to which she did not consent. Also, Ms. Mendez has not unduly delayed in seeking
2 the amendment. Although Ms. Mendez has previously amended her complaint, there is no
3 indication that the proposed amendment would unfairly prejudice C-Two or even C&L. Finally, at
4 this juncture in the proceedings, there is nothing to suggest that the proposed amendment would be
5 futile.¹

6 Accordingly, Ms. Mendez's motion is granted. Within a week of the date of this order, Ms.
7 Mendez shall file Exhibit A of the Littlefield declaration as her second amended complaint; she must
8 also serve a copy of the second amended complaint on C&L by the same date.

9 This order disposes of Docket No. 39.

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11 IT IS SO ORDERED.

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13 Dated: June 10, 2014

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16 EDWARD M. CHEN
17 United States District Judge

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27 _____
28 ¹ However, nothing in this order should be construed as barring C&L from making any
motion to dismiss the claim asserted against it, whether pursuant to Federal Rule of Civil Procedure
12(b)(6) or another rule.