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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION

7
8 CHALLENGE PRINTING COMPANY,
9 INC.,

10 Plaintiff,

11 v.

12 ELECTRONICS FOR IMAGING INC.,

13 Defendant.

Case No. [5:20-cv-04659-EJD](#)

**ORDER GRANTING MOTION FOR
LEAVE TO FILE SECOND AMENDED
COMPLAINT**

Re: Dkt. No. 39

14 This case arises out of a licensing agreement between Plaintiff, the Challenge Printing
15 Company, Inc. (“Challenge Printing”), and Defendant, Electronics for Imaging, Inc. (“EFI”), for
16 software to aid in Challenge Printing’s printing enterprise. Challenge Printing also entered into a
17 contract for Professional Services with EFI. In the First Amended Complaint, Challenge Printing
18 asserts claims for breach of contract, intentional as well as negligent misrepresentation, unfair
19 competition and deceit. Pending before the Court is Challenge Printing’s motion for leave to file a
20 second amended complaint. Dkt. No. 39. Challenge Printing requests leave to add a claim for
21 breach of the implied covenant of good faith and fair dealing and additional factual allegations to
22 support other claims.

23 Rule 15(a) of the Federal Rules of Civil Procedure governs motions for leave to amend and
24 provides that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P.
25 15(a)(2); *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (leave
26 should be granted with “extreme liberality”). The decision whether to grant leave to amend under
27 Rule 15(a) is committed to the sound discretion of the trial court. *Waits v. Weller*, 653 F.2d 1288,

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1 1290 (9th Cir. 1981). Leave need not be granted, however, where the amendment would cause the
 2 opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates
 3 undue delay. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Janicki Logging Co. v. Mateer*, 42 F.3d
 4 561, 566 (9th Cir. 1994). “Absent prejudice, or a strong showing of any of the remaining *Foman*
 5 factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend.”
 6 *Eminence Capital LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

7 EFI raises two objections to the motion. First, EFI contends that the proposed new claim is
 8 futile because it is based on the same conduct underlying the breach of contract claim, and is
 9 therefore superfluous. *See Bionghi v. Metro. Water Dist. of So. California*, 70 Cal. App. 4th 1358,
 10 1370 (1999) (claim for breach of the implied covenant that relies on the same acts and seeks the
 11 same damages as a claim for breach of contract is duplicative and may be disregarded); *In re*
 12 *Facebook PPC Adver. Litig.*, 709 F. Supp. 2d 762, 770 (N.D. Cal. 2010) (claim for breach of the
 13 implied covenant that relies on the same alleged acts and seeks the same damages already claimed
 14 in a companion contract claim may be disregarded as superfluous). Challenge Printing counters
 15 that the breach of the implied covenant and breach of contract claim are distinguishable.

16 Although there is some overlap of the two claims, the Court concurs with Challenge
 17 Printing that the proposed new claim is distinguishable. The breach of contract claim is based on,
 18 among other things, an allegation that EFI failed to provide Professional Services in “good and
 19 workmanlike manner consistent with generally accepted industry standards.” Mot. for Leave to
 20 File Second Am. Compl., Ex. 12, Redline of Second Am. Compl., Dkt. No. 39-12 ¶¶ 107.
 21 Challenge Printing’s proposed new claim for breach of the implied covenant of good faith and fair
 22 dealing is based on allegations that “without justification and in bad faith EFI ceased providing the
 23 Professional Services” that Challenge Printing had purchased; that EFI “abandoned” its efforts to
 24 allow Challenge Printing to use iQuote; and that EFI “unreasonably failed to cooperate with
 25 Challenge Printing’s performance and unreasonably failed to communicate with Challenge
 26 Printing to the extent that EFI believed Challenge Printing needed to take further or additional
 27 actions so that Challenge Printing could receive the benefit of its bargain with EFI.” Dkt. 39-12 ¶¶

1 115-120. In short, the breach of the implied covenant claim is based on additional allegations of
 2 abandonment, failure to cooperate, and failure to communicate that are not found in the breach of
 3 contract claim. Therefore, the two claims are not duplicative. *See Ronpak, Inc. v. Elecs. for*
 4 *Imaging, Inc.*, 2015 WL 179560, at *6 (N.D. Cal. Jan. 14, 2015) (“to the extent that the plaintiff’s
 5 implied covenant claim for unreasonably delayed software implementation is not premised on the
 6 same allegations as those supporting its breach of contract claim, specifically, that EFI did not
 7 provide functional software to plaintiff, it is *not* duplicative”). It follows that the proposed
 8 amendment is not futile.¹

9 Second, EFI contends that leave to amend should be denied because of Challenge
 10 Printing’s purported undue delay in bringing the motion and because of prejudice to EFI. The
 11 arguments are unpersuasive. Challenge Printing’s motion is timely, having been filed within the
 12 deadline set by the Case Management Order² and a month prior to the discovery cut-off. To be
 13 sure, Challenge Printing could have filed its motion sooner; however, its failure to do so does not
 14 constitute undue delay. As to prejudice, the Court recognizes that discovery is nearly complete
 15 and that there may be unresolved discovery issues; however, EFI does not articulate any particular
 16 prejudice it will suffer in the event the proposed amendments are allowed. EFI does not, for
 17 example, identify any additional discovery it must pursue to defend against the new claim and
 18 allegations. Furthermore, the Court notes that the deadline for dispositive motions is not until
 19 January 2022 and a trial date has not been set. Therefore, the proposed amendments are unlikely
 20 to interfere with the case schedule.

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 25 ¹ “The implied covenant is breached when the [defendant] unreasonably fails to cooperate with the
 26 other party’s performance.” *D’Andrea Bros. LLC v. United States*, 109 Fed. Cl. 243 (2013)
 (relying on *Malone v. United States*, 849 F.2d 1441, 1445 (Fed. Cir. 1988)).

27 ² See Case Management Order And Referral to Court Sponsored Mediation, Dkt. No. 30 (setting
 28 July 1, 2021 deadline for amending the pleadings).


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United States District Court
Northern District of California

On balance, the *Foman* factors weigh in favor of granting Challenge Printing leave to file a Second Amended Complaint. The motion is GRANTED.

IT IS SO ORDERED.

Dated: August 16, 2021


EDWARD J. DAVILA
United States District Judge