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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALI FARAJ, on Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

vs.

MARRIOTT INTERNATIONAL,
INC. and HOST HOTELS &
RESORTS, L.P.,

Defendants.

CASE NO. 13-CV-300 BEN (KSC)

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

[Docket No. 22]

Presently before the Court is Plaintiff's Motion for Leave to File Second Amended Complaint. (Docket No. 22.) For the reasons stated below, the Motion is **DENIED.**

BACKGROUND

Plaintiff Ali Faraj filed suit on February 6, 2013. On April 15, 2013, Plaintiff filed the First Amended Complaint ("FAC"), which is the operative complaint. In the FAC, Plaintiff alleges that he is a blind Event Billing Specialist at Defendant Marriott International, Inc. (FAC ¶¶ 3, 30); he uses a screen reading software called Jobs Access with Speech ("JAWS") to perform work on the computer (*id.* ¶¶ 3, 32); he applied to approximately 25 management positions (primarily sales manager positions), all of

1 which require the use of the Consolidated Inventory/Total Yield (“CI/TY”)¹ system
2 computer software program (*id.* ¶ 38); and he was denied “equal promotional
3 opportunities” to these positions because JAWS or other screen reading software is not
4 fully compatible with CI/TY (*id.* ¶¶ 4, 9, 33).

5 A Rule 16(b) Case Management Conference was held on September 27, 2013.
6 The Court set November 1, 2013 as the deadline for filing a motion to amend the
7 complaint.

8 On November 1, 2013, Plaintiff filed a Motion for Leave to File Second
9 Amended Complaint. (Docket No. 22.) The proposed Second Amended Complaint
10 (“SAC”) alleges: Plaintiff, Hull, and Sweigard are current and former employees of
11 Marriott who rely on “screen access software” (SAC ¶¶ 2, 28); screen access software
12 is commonly used by people by visual impairment or print disabilities (*id.*); Marriott
13 does not ensure the accessibility of its software with screen access software (*id.* ¶ 4);
14 Plaintiff, Hull, and Sweigard have sought employment opportunities with Marriott that
15 they were denied because they use screen access software that is not compatible with
16 the software used in the position sought (*id.* ¶¶ 5, 24, 33); Marriott’s actions and
17 decisions regarding procurement, installation, and configuration of software have failed
18 to “ensure the accessibility of its job-related software programs and technology systems
19 to persons with disabilities who use screen access software” (*id.* ¶ 4).

20 DISCUSSION

21 Leave to amend a complaint shall be freely given “when justice so requires.”
22 FED. R. CIV. P. 15(a). When an opposing party makes a showing of undue prejudice,
23 bad faith, or dilatory motive on the part of the party moving to amend, however, leave
24 to amend may properly be denied. *Foman v. Davis*, 371 U.S. 178, 182 (1962).
25 Whether to grant leave to amend is within the discretion of the trial court, and it may
26 be denied where justice so requires. FED. R. CIV. P. 15(a)(2); *Swanson v. U.S. Forest*
27 *Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). “The district court’s discretion to deny leave
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¹ Plaintiff refers to CI/TY as “Siebel CRM” in the FAC.

1 to amend is particularly broad where plaintiff has previously amended the complaint.”
2 *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

3 Here, the proposed SAC adds two new plaintiffs, Justin Hull and Amy Sweigard.
4 The allegations corresponding to these two new plaintiffs are substantially different
5 from those in the FAC. In regard to Hull, the SAC alleges that Hull was a reservation
6 specialist who was prevented from transferring to the Customer Service department due
7 to JAWS’s compatibility issues with LotusNotes, the Platinum Desk due to
8 compatibility issues with the CRIS and IMS software programs, the lead desk due to
9 compatibility issues with the applications used by the lead desk, and the Group
10 Housing department due to compatibility issues with the Property Management
11 software. (SAC ¶¶ 49-62.) In regard to Sweigard, the SAC alleges that Sweigard was
12 a reservation specialist who was prevented from transferring to the Internet Email
13 Customer Care Department due to JAWS’s compatibility issues with LotusNotes; the
14 Platinum Desk, Scheduling Department, and Central Pod Office due to compatibility
15 issues with the software required to perform those jobs; and the quality assurance
16 program due to compatibility issues with Tealeaf. (*Id.* ¶¶ 63-74.) The proposed SAC,
17 therefore, greatly expands the allegations in terms of the software at issue and the type
18 of position sought.

19 Allowing Plaintiff to amend the complaint by adding substantially different
20 allegations at this point in the proceedings would unduly prejudice Marriott. Such an
21 expansion in the claims would require Marriott to conduct significant additional
22 discovery. The deadline for conducting class certification discovery, however, is
23 January 24, 2014—only six weeks after the date the Motion to Amend the Complaint
24 was set for hearing. In addition, Marriott has already served Plaintiff with requests for
25 production of documents, requests for admissions and interrogatories, and taken two
26 days of Plaintiff’s deposition. (Messigian Decl. ¶¶ 3-4.) Accordingly, leave to amend
27 is **DENIED**.

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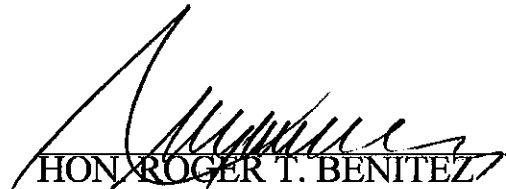
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CONCLUSION

For the reasons stated above, the Motion for Leave to File Second Amended Complaint is **DENIED**.

IT IS SO ORDERED.

DATED: January 23 2014


HON. ROGER T. BENITEZ
United States District Judge