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5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
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8 MICROSOFT CORPORATION, a
9 Washington corporation,
10 Plaintiff,
11 v.
12 ACADEMIC SOFTWARE HQ INC.,
13 a Nevada corporation,
14 Defendant.

Case No.: 16cv1753-BTM-BLM

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND**

[ECF NO. 14]

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16 Plaintiff Microsoft Corporation, a Washington corporation ("Microsoft"), has
17 filed a motion for leave to amend its complaint. (ECF No. 14.) For the reasons
18 discussed below, the motion will be granted.

19 **I. BACKGROUND**

20 On July 7, 2016, Microsoft filed a complaint against defendant Academic
21 Software HQ Inc., a Nevada corporation ("Academic Software HQ"), stating claims
22 for copyright and trademark infringement based on Academic Software HQ's
23 allegedly infringing advertisement and sale of Microsoft Software on its internet
24 website, academicsoftwarehq.com. Academic Software HQ failed to respond to
25 the complaint, and its default was entered on August 15, 2016. Microsoft then filed
26 a motion for judgment by default. The Court found Microsoft had not demonstrated
27 sufficient contacts between Academic Software HQ and California to support the
28 Court's exercise of personal jurisdiction over Academic Software HQ, denied the

1 motion, and issued an order to show cause (“OSC”) why the action should not be
2 dismissed for lack of personal jurisdiction. (ECF Nos. 9, 12.)

3 Microsoft responded to the OSC with evidence that a shipment of disks
4 containing infringing software was distributed by Academic Software HQ from an
5 address in San Diego, and that Shawn Green, Academic Software HQ’s sole
6 corporate officer, operated businesses from the same San Diego address. The
7 Court found this evidence sufficient to make a prima facie showing that Academic
8 Software HQ is subject to general personal jurisdiction in this forum and
9 discharged the OSC. (ECF No. 16.)

10 Microsoft now moves for leave to amend the complaint to add Shawn Green
11 as a defendant, and to allege jurisdictional facts supporting the Court’s exercise of
12 personal jurisdiction over Green and Academic Software HQ. Microsoft contends
13 it learned about Green’s apparent involvement in sending infringing materials on
14 behalf of Academic Software HQ when it discovered, in connection with gathering
15 evidence for its response to the OSC, that Green was personally operating other
16 businesses out of the same San Diego address. It seeks to add him as a defendant
17 on grounds he is vicariously, contributorily, or directly liable for the same copyright
18 and trademark violations currently asserted against Academic Software HQ. The
19 jurisdictional facts it seeks to add to the complaint conform to the evidence it
20 submitted in response to the OSC.

21 Microsoft’s motion was served on Academic Software HQ and is unopposed.

22 **II. DISCUSSION**

23 Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend should
24 be freely given “when justice so requires,” Fed. R. Civ. P. 15(a)(2), a policy the
25 Ninth Circuit applies with “extreme liberality.” Owens v. Kaiser Found. Health Plan,
26 244 F.3d 708, 712 (9th Cir. 2001). “Courts may decline to grant leave to amend
27 only if there is strong evidence of ‘undue delay, bad faith or dilatory motive on the
28 part of the movant, repeated failure to cure deficiencies by amendments previously

1 allowed, undue prejudice to the opposing party by virtue of allowance of the
2 amendment, [or] futility of amendment, etc.” Sonoma County Ass’n of Retired
3 Employees v. Sonoma County, 708 F.3d 1109, 1117 (9th Cir. 2013) (quoting
4 Foman v. Davis, 371 U.S. 178, 182 (1962)).

5 Rule 20(a)(2) additionally applies where the proposed amendment adds a
6 codefendant. Wright, Miller, Kane, 7 Fed. Practice & Proc.: Civil 3d § 1652 (3d ed.
7 2001). Under Rule 20(a)(2), “[p]ersons ... may be joined in one action as
8 defendants if ... (A) any right to relief is asserted against them jointly, severally, or
9 in the alternative with respect to or arising out of the same transaction, occurrence,
10 or series of transactions or occurrences; and (B) any question of law or fact
11 common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). Rule
12 20 “is to be construed liberally in order to promote trial convenience and to expedite
13 the final determination of disputes.” League to Save Lake Tahoe v. Tahoe
14 Regional Planning Agency, 558 F.2d 914, 917 (9th Cir. 1977); see United Mine
15 Workers of America v. Gibbs, 383 U.S. 715, 724 (1966) (“Under the rules, the
16 impulse is toward entertaining the broadest possible scope of action consistent
17 with fairness to the parties; joinder of claims, parties and remedies is strongly
18 encouraged.”).

19 The Court finds Microsoft’s motion for leave to amend satisfies the foregoing
20 requirements. First, none of the factors that require denial of leave to amend under
21 Rule 15(a) are present. The proposed amendment to name Shawn Green as a
22 defendant is not futile, because Microsoft alleges he is potentially directly liable
23 based on his alleged direct involvement in distributing infringing materials, or
24 alternatively that he exercised control over Academic Software HQ and is
25 contributorily or vicariously liable for Academic Software HQ’s copyright and
26 trademark infringement. See Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259,
27 262-65 (9th Cir. 1996) (holding plaintiff could pursue claims for copyright and
28 trademark infringement based on theories of vicarious or contributory liability). The

1 amendments to add jurisdictional allegations are likewise non-futile. Based on
2 Microsoft's contention it discovered the facts on which its proposed amendments
3 are based while gathering evidence in response to the Court's OSC, there was no
4 undue delay in bringing this motion, and in any event, undue delay is not sufficient
5 grounds for denying leave to amend. Morongo Band of Mission Indians v. Rose,
6 893 F.2d 1074, 1079 (9th Cir. 1990). There is no indication of bad faith, dilatory
7 motive, or prejudice to Academic Software HQ, nor has there been a "repeated
8 failure to cure deficiencies," given that this is the first time Microsoft has sought
9 leave to amend.

10 Second, the addition of Shawn Green as a codefendant satisfies the
11 permissive joinder requirements of Rule 20(a)(2). Microsoft's proposed amended
12 complaint asserts claims against Green and Academic Software HQ jointly, and
13 the claims arise out of the same transactions or occurrences and present questions
14 of law and fact common to both defendants. See Fed. R. Civ. P. 20(a)(2)(A), (B).

15 Accordingly, the Court finds that Microsoft's motion meets the requirements
16 of Rules 15(a) and 20(a)(2) and will grant leave to amend.

17 **III. CONCLUSION AND ORDER**

18 For the reasons discussed above, Microsoft's motion for leave to amend is
19 GRANTED.

20 IT IS SO ORDERED:

21 Dated: July 3, 2017

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23 Barry Ted Moskowitz, Chief Judge
24 United States District Court
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