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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 HDWEBSOFT CO., LTD.,  
11 Plaintiff and Counter-Defendant,  
12 v.  
13 SKYLAB APPS, INC.; and DOES 1-10  
14 inclusive,  
15 Defendants and Counter-Claimant.  
16

Case No.: 3:17-cv-01081-BEN-JMA

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

**[Doc. No. 27.]**

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18 Presently before the Court is a Motion for Leave to File First Amended Complaint  
19 by Plaintiff HDWEBSOFT Co., Ltd. ("HDWEBSOFT"). (Doc. No. 27.) Plaintiff now  
20 seeks to file a first amended complaint to add Skylab USA, Inc. ("Skylab USA") as a  
21 second defendant in this action. Defendant Skylab Apps Inc. ("Skylab Apps") filed an  
22 opposition contending amendment is belated, prejudicial, and futile to which Plaintiff  
23 Replied. (Doc. Nos. 28-29.) Having reviewed the motion and related filings, the Court  
24 determines that the motion is suitable for decision without oral argument. The motion is  
25 hereby **GRANTED**.

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28 **BACKGROUND**

1 On May 25, 2017, HDWEBSOFT<sup>1</sup> filed its initial complaint against Skylab Apps<sup>2</sup>.  
2 (Doc. No. 1.) HDWEBSOFT's complaint alleges breach of contract and common counts  
3 against Skylab Apps for its alleged failure to pay \$220,000 in past-due invoices for  
4 HDWEBSOFT's software development services. (*Id.*) Skylab Apps denies the claims  
5 and counterclaims against HDWEBSOFT for breach of contract and defamation. (*Id.*)

6 On February 28, 2018, the Honorable Jan M. Adler issued a Case Management  
7 Scheduling Order setting March 12, 2018, as the deadline to add parties or amend the  
8 pleadings. (Doc. No. 23 at 1.) All fact discovery was to be concluded by July 2, 2018.  
9 (*Id.*) The Final Pretrial Conference is scheduled for March 11, 2019, at 10:30 a.m. before  
10 the Honorable Roger T. Benitez.

11 HDWEBSOFT seeks leave to file its proposed first amended complaint to add  
12 Skylab USA, Inc. as a second defendant in this matter.

### 13 LEGAL STANDARD

14 Leave to amend under Rule 15(a)(2) should be "freely give[n] . . . when justice so  
15 requires." The Ninth Circuit "has noted on several occasions . . . that the Supreme Court  
16 has instructed the lower federal courts to heed carefully the command of Rule 15(a), . . .  
17 by freely granting leave to amend when justice so requires." *DCD Programs, Ltd. v.*  
18 *Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (noting "the underlying purpose of Rule 15 –  
19 to facilitate a decision on the merits rather than on the pleadings or technicalities.").  
20 "This policy is 'to be applied with extreme liberality.'" *Eminence Capital, LLC v.*  
21 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting *Owens v. Kaiser Found.*  
22 *Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). Courts consider "undue delay, bad  
23 faith, dilatory motive, repeated failure to cure deficiencies by previous amendments,  
24 undue prejudice to the opposing party, and futility of the proposed amendment" in  
25 deciding whether justice requires granting leave to amend under Rule 15. *Moore v.*

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27 <sup>1</sup> HDWESBSOFT is a Vietnamese software developer. (Doc. No. 27-1 at 2.)

28 <sup>2</sup> Skylab Apps. is a San Diego based app company. (*Id.*)

1 *Kayport Package Express, Inc.*, 885 F.3d 531, 538 (9th Cir. 1989) (citing *Foman v.*  
2 *Davis*, 370 U.S. 178, 182 (1962)).

### 3 DISCUSSION

4 HDWEBSOFT filed a motion seeking leave to file a First Amended Complaint  
5 (“FAC”). In the motion, HDWEBSOFT acknowledges that the Court previously  
6 indicated that “Any motion to join other parties, to amend the pleadings, or to file  
7 additional pleadings shall be filed by March 12, 2018.” (Doc. No. 27 at 5.) However,  
8 HDWEBSOFT explains that it was unaware that Skylab Apps, Inc. had been “dissolved”  
9 into Skylab USA, Inc. until it deposed Dean Gray on July 31, 2018.<sup>3</sup> This newly  
10 discovered information alerted HDWEBSOFT of the need to amend the Complaint.  
11 HDWEBSOFT attempted to address the issue by requesting defense counsel to consent to  
12 the filing of an amended pleading on July 31, 2018 which Skylab’s counsel declined to  
13 do. (*Id.* at 5.) Next, HDWEBSOFT put the issue before the Court at the August 29, 2018  
14 Case Management Conference. (*Id.* at 6.) It was determined that a formal motion was  
15 necessary due to the scheduling order’s March 12, 2018 amended pleading cut-off date.  
16 (*Id.* at 6.) Thereafter, HDWEBSOFT filed the instant motion September 6, 2018.

17 Skylab Apps argues the Court should deny HDWEBSOFT’s motion because the  
18 FAC is based on information HDWEBSOFT should have discovered six months ago  
19 before the period to amend the pleadings expired. (Doc. No. 28 at 2.) Specifically,  
20 HDWEBSOFT “could have performed due diligence by gathering information on the  
21 corporate structure of the company it sued at any point in this case.” (*Id.*) Moreover,  
22 granting the motion at this late stage would prejudice Skylab USA and be futile because  
23 Skylab USA had nothing to do with the contract at issue in this case. (*Id.* at 2-3.)

24 HDWEBSOFT argues amendment is justified because Skylab Apps “‘corporate  
25 structure’ is not really a structure *per se*, but rather just a slippery moving target that can  
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28 <sup>3</sup> Dean Gray is the CEO of Skylab USA and Skylab Apps. (Doc. No. 27-1 at 5.)

1 easily allude [sic] both creditors and the judicial system alike.” (Doc. No. 29 at 2.) For  
2 example, none of Skylab Apps discovery documents or written responses evidenced a  
3 business entity called “Skylab USA, Inc.” (*Id.* at 3.) HDWEBSOFT also asked Skylab  
4 Apps former VP of Development, Bryan Farris about Skylab USA, Inc. (*Id.* at 5.) At his  
5 June 29, 2018 deposition, Mr. Farris stated the name Skylab USA, Inc. sounded  
6 “familiar,” but he did not know the “specifics” of the different entities. (*Id.*) Finally, it  
7 was not until HDWESTSOFT deposed Skylab Apps CEO Dean Gray on July 31, 2018  
8 that it was learned that Skylab Apps was dissolved into Skylab USA, Inc. with all Skylab  
9 Apps shareholders maintaining their same ownership in Skylab USA, Inc. (*Id.*) As a  
10 result, HDWEBSOFT contends further research on its part “was warranted prior to  
11 bringing a motion to add Skylab USA, Inc. to the lawsuit.” (*Id.*)

12 The Court notes there is no indication that HDWEBSOFT was acting in bad faith,  
13 or that the proposed amendment would be “futile” if granted. Any potential “prejudice”  
14 Skylab USA might suffer is minimal at best. Under the circumstances, the Court finds  
15 that even with its exercise of due diligence, HDWEBSOFT could not have met the March  
16 12, 2018 deadline to add Skylab USA, Inc. as a second defendant. This information is  
17 sufficient to allow an amendment to the Complaint.

18 Therefore, the Motion is granted.

19 **CONCLUSION**

20 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. The proposed First  
21 Amended Complaint, adding Defendant Skylab USA, Inc., is deemed accepted and shall  
22 be filed. Plaintiff shall file the First Amended Complaint within three (3) days of the date  
23 of this Order.

24 **IT IS SO ORDERED.**

25 Dated: November 16, 2018

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27 Hon. Roger T. Benitez  
28 United States District Judge