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

FOTOHAUS, LLC,  
  
Plaintiff,  
  
v.  
  
CONSUMERTRACK, INC.,  
  
Defendant.

No. 3:18-cv-687-WQH-JLB

**ORDER**

HAYES, Judge:

The matter before the Court is Plaintiff’s Motion for Leave to Amend the Complaint (ECF No. 37).

**I. Background**

On April 6, 2018, Plaintiff Fotohaus, LLC (Fotohaus) initiated this action by filing the Complaint. (ECF No. 1). The Complaint alleges Consumertrack, Inc. (Consumertrack) infringed on Fotohaus’s copyright in violation of 17 U.S.C. § 501. *Id.* ¶ 30. Fotohaus alleges Consumertrack utilized a copyrighted photo owned by Fotohaus on its website without permission. *Id.* ¶ 22. On December 7, 2018, Plaintiff filed a Motion for Leave to Amend the Complaint. (ECF No. 37). On December 30, 2018, Defendant filed Opposition. (ECF No. 38). On January 7, 2019, Plaintiff filed a Reply. (ECF No. 39).

1           **II. Contentions**

2           Plaintiff seeks leave to amend the Complaint because Plaintiff “mistakenly  
3 included the incorrect Registration Certificate for the Work at issue in this matter  
4 at Exhibit 3.” (ECF No. 37-1 at 2). Plaintiff asserts that it intended to attach  
5 Registration Certificate VA 1-919-051 at exhibit 3 to the Complaint but erroneously  
6 attached Registration Certificate Number VA 1-907-951. Plaintiff contends that  
7 Defendant will not be prejudiced by amendment because Defendant is aware of the  
8 existence of the correct registration certificate and “there is no issue with lack of  
9 notice or surprise as to the allegations in Fotohaus’ Complaint.” *Id.* at 3.

10           Defendant contends it will be prejudiced by the proposed amendment because  
11 “the Amended Complaint exchanges one copyrighted work, cited in the Complaint,  
12 for another.” (ECF No. 38 at 2). Defendant asserts that it will be prejudiced  
13 because allowing Fotohaus to cite the correct registration certificate would  
14 “provide[] Fotohaus with a substantive basis it previously did not set forth.” *Id.*

15           **III. Legal Standard**

16           Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely  
17 given when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied  
18 with extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,  
19 1051 (9th Cir. 2003) (per curiam) (quoting *Owens v. Kaiser Found. Health Plan,*  
20 *Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). The Supreme Court has identified several  
21 factors district courts should consider when deciding whether to grant leave to  
22 amend: “undue delay, bad faith or dilatory motive on the part of the movant,  
23 repeated failure to cure deficiencies by amendments previously allowed, undue  
24 prejudice to the opposing party by virtue of allowance of the amendment, [and]  
25 futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Smith*  
26 *v. Pac. Props. Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004). “Not all of the  
27 [*Foman*] factors merit equal weight. As this circuit and others have held, it is the  
28 consideration of prejudice to the opposing party that carries the greatest weight.”

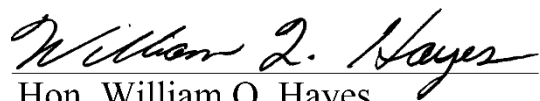
1 *Eminence Capital*, 316 F.3d at 1052. “The party opposing amendment bears the  
2 burden of showing prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187  
3 (9th Cir. 1987). “Absent prejudice, or a strong showing of any of the remaining  
4 *Foman* factors, there exists a *presumption* under Rule 15(a) in favor of granting  
5 leave to amend.” *Eminence Capital*, 316 F.3d at 1052.

6 **IV. Decision of the Court**

7 Plaintiff alleges that Defendant infringed its copyright on a single image  
8 owned by Plaintiff. Plaintiff cited the correct certification of registration for the  
9 image, No. VA 1-919-051, at paragraph eighteen of the original Complaint, but  
10 mistakenly attached the wrong certification. The Court finds that Defendant has  
11 failed to demonstrate that Defendant would suffer prejudice if Plaintiff were granted  
12 leave to file an amended complaint with the correct certificate of registration  
13 attached at exhibit 3. The Court finds that there has been no showing that any of the  
14 remaining *Foman* factors warrants deviating from the “presumption under Rule  
15 15(a) in favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052.

16 Plaintiff’s Motion for Leave to Amend the Complaint (ECF No. 37) is  
17 GRANTED. Plaintiff may file the proposed Amended Complaint (ECF No. 37-2)  
18 within ten days of the date this Order is filed.

19 Dated: February 26, 2019

  
20 Hon. William Q. Hayes  
21 United States District Court  
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