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

L1 TECHNOLOGIES, INC.; SYNCWISE, LLC; and PIXELS MATTER, LLC, Plaintiffs, v. SERHII CHEKANOV; DMITRY FATEEV; ROMAN KOLESNIKOV; and VEBERFOC, INC., Defendants.
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Case No.: 20-cv-00259-H-JLB

**ORDER GRANTING PLAINTIFFS’
MOTION FOR LEAVE TO AMEND
THE COMPLAINT**

[Doc. No. 18.]

On February 11, 2020, Plaintiffs L1 Technologies, Inc., Syncwise, LLC, and Pixels Matter, LLC (collectively, “Plaintiffs”) filed a complaint against Defendants Serhii Chekanov, Dmitry Fateev,¹ Roman Kolesnikov, and VeberFOC, Inc. (collectively, “Defendants”). (Doc. No. 1.) On September 15, 2020, Plaintiffs filed a motion for leave

¹ On June 16, 2020, Fateev filed a motion to dismiss the complaint. (Doc. No. 6.) Shortly thereafter, Plaintiffs and Fateev settled, with both agreeing to release all claims they had against one another. (Doc. No. 16.) Accordingly, the Court dismissed Fateev’s motion to dismiss as moot. (Doc. No. 17.)

1 to amend their complaint, seeking leave to add causes of action for defamation and trade
2 libel. (Doc. No. 18 at 1; see also Doc. No. 19, Proposed Amended Compl. ¶¶ 31-33, 90-
3 95.) Defendant filed a response in opposition to Plaintiffs’ motion on September 22, 2020.
4 (Doc. No. 21.) Plaintiffs did not file a reply. For the following reasons, the Court grants
5 Plaintiffs’ motion for leave to amend their complaint.

6 **BACKGROUND**

7 On February 11, 2020, Plaintiffs filed a complaint against Defendants. (Doc. No.
8 1.) In the complaint, Plaintiffs alleged claims against Chekanov for: (1) breach of contract;
9 (2) breach of the covenant of good faith and fair dealing; (3) fraud and concealment; (4)
10 negligent misrepresentation; and (5) breach of fiduciary duty. (Id.) Plaintiffs also alleged
11 claims against Defendants for: (6) conspiracy; (7) conversion; (8) misappropriation by
12 acquisition; (9) unjust enrichment; (10) unfair and deceptive trade practices; (11) unfair
13 competition in violation of California Business and Professions Code § 17200 et seq.; and
14 (12) intentional interference with contracts. (Id.)

15 According to Plaintiffs, since the filing of their complaint, Defendants have
16 repeatedly commented false statements on Plaintiffs’ customers’ social media platforms.
17 (Doc. No. 19, Proposed Amended Compl. ¶¶ 31-32.) Plaintiffs provide several examples
18 of these activities in Exhibit 6 of their proposed amended complaint. (Id. Ex. 6.) For
19 example, Plaintiffs allege that Defendants commented the following message on one of
20 Plaintiffs’ customer’s LinkedIn posts:

21 The level of specialists L1 Technologies [sic] is very low Developers are
22 engaged in theft and copying of branded electrical and GPS devices while
23 presenting the development as their own. Also, the main boss turns out to be
24 violates for women [sic] as evidenced by several lawsuits from women against
him in the USA! I will not advise this disgusting company.

25 (Id.) Plaintiffs’ customers have contacted them about these comments, complaining that it
26 is a nuisance to continuously monitor and delete these false statements. (Id. ¶ 32.)

27 Also, Defendants allegedly made false statements about Plaintiffs’ business
28 operations to the Internal Revenue Service (“IRS”). (Id. ¶ 33.) Plaintiffs’ proposed

1 amended complaint attaches an IRS information referral form (Form 3949-A), allegedly
2 filed by Chekanov, in which Chekanov reported Plaintiffs for suspected tax law violations.²
3 (Id. Ex. 7.) According to the exhibit, Chekanov reported t that Plaintiffs were hiding their
4 income by and through their various affiliate businesses and overseas operations. (Id.)

5 Based on these new allegations, Plaintiffs now seek to amend their complaint to add
6 claims for defamation and trade libel against Defendants. (Doc. No. 18 at 1.) Chekanov’s
7 response in opposition to Plaintiffs motion was largely nonresponsive. (See Doc. No. 21
8 at 1-2.) Chekanov did state, however, that he had “no relationship” to the alleged
9 correspondence with Plaintiffs’ customers on social media³ and that “it is not worth
10 connecting” these activities with his statements to the IRS. (See id. at 1.)

11 **DISCUSSION**

12 Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading
13 only with the opposing party’s written consent or the court’s leave.” The “court should
14 freely give leave when justice so requires.” Id. “[T]his policy is to be applied with extreme
15 liberality.” Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)
16 (quoting Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)).
17 “Generally, this determination should be performed with all inferences in favor of granting
18 the motion.” Griggs v. Pace Am. Grp., Inc., 170 F.3d 877, 880 (9th Cir. 1999).

19 Courts may not decline to grant leave to amend absent a strong showing of “undue
20 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure
21 deficiencies by amendments previously allowed, undue prejudice to the opposing party by
22 virtue of allowance of the amendment, [or] futility of amendment, etc.” Sonoma Cnty.
23 Ass'n of Retired Empl. v. Sonoma Cnty., 708 F.3d 1109, 1117 (9th Cir. 2013) (alteration

25 ² The form was signed by “Chekanov S.P.” (Id. Ex. 7.) In his response, Chekanov did not dispute
26 that he filed this form with the IRS. (Doc. No. 21 at 1.) Rather, he referred to the form as “my information
27 [sic] to the US IRS.” (Id. (emphasis added).)

28 ³ None of the comments Plaintiffs attached in Exhibit 6 were made by profiles bearing the names of
Defendants. (See Doc. No. 19, Ex. 6.) Nonetheless, Plaintiffs contend that these posts were made by
Defendants. (Id. ¶¶ 31-32.)

1 in original) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). “[T]he consideration of
2 prejudice to the opposing party carries the greatest weight.” Id. (alteration in original)
3 (quoting Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir.2003)).
4 Absent prejudice, “or a strong showing of any of the remaining . . . factors, there exists a
5 presumption under Rule 15(a) in favor of granting leave to amend.” Eminence Capital,
6 316 F.3d at 1052

7 The circumstances of this case favor granting Plaintiffs leave to amend. This is
8 Plaintiffs’ first request for leave to amend. There is no evidence before the Court that
9 would suggest that Plaintiffs delayed bringing its new claims or brought them in bad faith;
10 to the contrary, Plaintiffs seek to amend their complaint to add claims based on the
11 activities Defendants engaged in after the filing of the initial complaint. (Doc. No. 18 at 1;
12 Doc. No. 19 ¶¶ 31-33.) Additionally, there are no facts indicating that Defendants would be
13 prejudiced by the proposed amendments or that the amendments would unduly delay the
14 proceeding. The action is in its early stages, and the new claims neither “radically shift the
15 nature of the case” nor do they require Defendants “to engage in substantial new
16 discovery.” Lockheed Martin Corp. v. Network Sols., Inc., 175 F.R.D. 640, 644 (C.D. Cal.
17 1997) (citing Morongo Band of Mission Indians v. Rose, 893 F.2d 1074 (9th Cir.1990)).
18 Finally, Chekanov’s contentions that (1) he has “no relationship” to the alleged social
19 media messages described in the Plaintiff’s proposed amended complaint and (2) these
20 messages should not be connected to his statements to the IRS are not enough to outweigh
21 the strong presumption in favor of granting leave to amend.⁴ See Eminence Capital, 316
22 F.3d at 1052; see also Griggs, 170 F.3d at 880 (explaining all inferences should made in
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25 ⁴ To the extent that Chekanov is challenging the futility of Plaintiffs’ new claims, he is free to
26 challenge the sufficiency of Plaintiffs new allegations in a subsequent motion. “Denial of leave to amend
27 on [futility grounds] is rare. Ordinarily, courts will defer consideration of challenges to the merits of a
28 proposed amended pleading until after leave to amend is granted and the amended pleading is filed.”
Netbula, LLC v. Distinct Corp., 212 F.R.D. 534, 539 (N.D. Cal. 2003); see also SAES Getters S.p.A. v.
Aeronex, Inc., 219 F. Supp. 2d 1081, 1086 (S.D. Cal. 2002) (“[Futility] issues are often more appropriately
raised in a motion to dismiss rather than in an opposition to a motion for leave to amend.”).

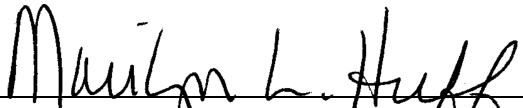
1 favor of granting leave); Hinrichsen v. Quality Loan Serv. Corp., No. 16-CV-0690 DMS
2 (NLS), 2017 WL 56258, at *3 (S.D. Cal. Jan. 5, 2017) (“Relevance . . . is not a factor in
3 determining whether to grant leave to amend.”). Accordingly, the Court grants Plaintiffs’
4 motion for leave to amend the complaint.

5 **CONCLUSION**

6 For the foregoing reasons, the Court grants Plaintiffs’ motion for leave to amend the
7 complaint. Plaintiffs must file their amended complaint on or before October 23, 2020.
8 Defendants who have been served and responded to the original complaint have 30 days
9 from the date of the filing of the amended complaint to respond. Defendants who have not
10 been served must be served with the amended complaint in accordance with the applicable
11 laws and treaties.

12 **IT IS SO ORDERED.**

13 DATED: October 15, 2020

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16 MARILYN L. HUFF, District Judge
17 UNITED STATES DISTRICT COURT
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