

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

PENSACOLA MOTOR SALES,
a Florida corporation, d/b/a
BOB TYLER TOYOTA,

Plaintiff,

vs.

CASE NO. 3:09cv571/RS-MD

EASTERN SHORE TOYOTA, LLC, an
Alabama Limited Liability Company;
DAPHNE AUTOMOTIVE, LLC, an
Alabama Limited Liability Company;
SHAWN ESFAHANI, Individually;
and DAPHNE ENTERPRISES, INC.,
an Alabama corporation,

Defendants.

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ORDER

Before me is the Plaintiff's Motion For Leave To File A Second Amended Complaint (Doc. 46).

Plaintiff has previously filed a First Amended Complaint (Doc. 24) on February 16, 2010. The discovery deadline is July 15, 2010, and jury trial is scheduled for September 27, 2010. I find that the amendments sought by Plaintiff will cause undue delay in the resolution of this case.

IT IS ORDERED:

1. Plaintiff is granted leave to file a second amended complaint to assert the eight additional domain names which include Plaintiff's trademark. Plaintiff shall file the second amended complaint not later than June 9, 2010.

2. Plaintiff's motion to amend is denied as to certain domain names unrelated to Plaintiff and identified in paragraphs 1-30 of Plaintiff's motion to amend. Those domain names appear to be evidentiary matters which are not essential elements of the causes of action asserted by Plaintiff.
3. Plaintiff's motion to amend to include MJMI Internet, LLC, Advanced Dealer Systems, and any other fictitious party/defendant is denied. Joinder of MJMI Internet, LLC and Advanced Dealer Systems appears unnecessary for the complete relief sought by Plaintiff and will unduly delay resolution of this case. Furthermore, although Plaintiff's First Amended Complaint (Doc. 24) identified "John Does 1-10" as parties-defendants, they were not challenged or otherwise brought to the court's attention. As a general matter, fictitious-party pleading is not permitted in federal court. See *New v. Sports & Recreation, Inc.*, 114 F.3d 1092, 1094, n. 1 (11TH Cir. 1997); *Richardson v. Johnson*, F.Supp.2d 2007 WL 9570721. The second amended complaint shall not include fictitious parties.

ORDERED on June 3, 2010.

/S/ Richard Smoak
RICHARD SMOAK
UNITED STATES DISTRICT JUDGE