

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Daniel R. Castro
Plaintiff

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v.

CIVIL ACTION NO: 10CA695

ENTREPRENEUR MEDIA, INC.
Defendant

**CASTRO’S REPLY TO RESPONSE TO MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Now Comes Plaintiff, Daniel R. Castro (“Castro”) and files this Reply to Response to Motion For Leave to File Second Amended Complaint and would show unto the court as follows:

**I. CONCLUSORY ALLEGATIONS CANNOT DEFEAT A MOTION
FOR LEAVE TO AMEND**

EMI has only attempted to articulate two reasons why the Motion For Leave to Amend should be denied: (1) prejudice; and (2) “repeated” failure to cure deficiencies. Each of these will be examined in turn. However, the Court should be aware that the Fifth Circuit uses a slightly higher preference in favor of granting leave to amend than the other circuits. The Fifth Circuit has stated, “Rule 15 evinces a bias in favor of granting leave to amend ... thus, unless there is a *substantial reason* to deny leave to amend, the discretion of the district court is not broad enough to permit denial.” *Id.* at 583 (emphasis added).

In fact, just a few months ago, the Fifth Circuit made it clear that the purpose of Rule 15 is to facilitate the disposition of a case on the merits. *See Tapp v. Shaw Environmental, Inc.*, 401 Fed. Appx. 930 (5th Cir. 2010)(citing *Krupski v. Costa Crocier S.p.A.*, 130 S.Ct. 2485, 2488 (2010)). Even the Ninth Circuit, which has a historical bias toward large media companies like EMI, agrees. *Hurn v. Retirement Fund Trust of the Plumbing and Heating and Piping Industry of Southern California*, 648 F.2d 1252, 1253 (9th Cir. 1981)(“Bald assertions of prejudice cannot

overcome the strong policy reflected in Rule 15(a) to ‘facilitate a proper disposition on the merits’”). The Sixth Circuit also agrees. See *Langley v. Credit Suisse First Boston Corp.*, 89 Fed. Appx. 938, 944 (6th Cir. 2004)(“Rule 15 reinforces the principle that cases should be tried on their merits rather than the technicalities of pleadings”).

II. EMI HAS MADE ONLY CONCLUSORY ALLEGATIONS OF “PREJUDICE”

It is well established law in the Fifth Circuit (and in every circuit) that conclusory allegations of “prejudice” are insufficient grounds upon which to deny a Rule 15 motion to amend. *Nance v. Gulf Oil Corp.*, 817 F.2d 1176, 1179 (5th Cir. 1987)(“[W]e need not speculate as to what possible prejudice Gulf encountered when Gulf has done nothing more than allege in vague and conclusory terms the damage it suffered by the introduction of a claim which presented no unforeseen issues.”). In *Nance*, the Fifth Circuit upheld the district court’s decision to allow an “eve-of-trial” amendment because the defendant “has completely failed to articulate the prejudice it faced as a result of this event.”

Classic evidence of undue prejudice is when the amended complaint would require additional discovery after the close of discovery, when it would require additional witnesses, when it would require additional experts, when it is made on the eve of trial, etc. (although sometimes an amendment is properly allowed even on the eve-of-trial as in *Nance*). See e.g., *J.P. Morgan Chase Bank v. Drywall Service Supply Co.*, 265 F.R.D. 341 (N.D. Ill 2010)(articulating various legitimate reasons why courts have denied leave to amend). It would be highly unusual indeed for this Court to deny leave to amend when a scheduling order has not even been issued, absolutely no discovery has taken place, no documents have been produced, no depositions have been taken, no party has relied on the other party’s pleadings to its detriment, and no trial date has been set. Indeed, in a case with almost identical facts, the Sixth Circuit held it was an abuse of discretion to deny leave to amend. See e.g., *Dubicz v. Commonwealth Edison Company*, 377 F.3d 787, 793 (7th Cir.

2004)(“In this case, the proceeding never progressed much beyond the filing of a complaint, an amended complaint, and CoMed’s responses (in the form of a motion to dismiss) thereto.”). This is especially true where the amended complaint actually cured the factual deficiencies pointed out by the district court in its order granting the motion to dismiss. *Id.*

Like the defendant in *Nance*, EMI’s response to the motion to amend only states in conclusory fashion that it will be prejudiced - without any specific factual explanations of how it will be prejudiced and no documents or any kind of evidence substantiating the alleged “harm” it will suffer. As a result, EMI’s response leaves this Court without the ability to articulate a legitimate reason why EMI will be prejudiced. If the Court is unable to articulate any specific reasons why the Defendant will be prejudiced, the court’s conclusory finding of prejudice will not stand up on appeal. *See Rowe v. United States Fidelity and Guaranty Co.* 421 F.2d 937 (4th Cir. 1970)(the court’s conclusory finding of prejudice was an abuse of discretion)

Moreover, the Fifth Circuit has made it clear that the standard is “*undue prejudice*” not merely “prejudice.” *United States of America, ex rel v. Cardinal Health, Inc.* 625 F.3d 262, 270 (5th Cir. 2010)(“We have held that a district court abuses its discretion, however, when it gives no reasons for denying a timely motion to amend, at least when the defendant would not be *unduly prejudiced* by the amendment.”)(emphasis added). Here, EMI makes no attempt to satisfy the Fifth Circuit standard with even a conclusory allegation of “undue prejudice.”

The cursory “facts” alleged by EMI amount to nothing more than a showing of “inconvenience.” A “mere inconvenience” because it would require the defendants to file additional motions or to fight new claims is not a sufficient basis for denying leave to amend. *Morse v. McWhorter*, 290 F.3d 795, 801 (6th Cir. 2002)(“We recognize Columbia will be inconvenienced by another round of motion practice, but given the magistrate’s recommendation and the competing interest of the proposed class, such inconvenience does not rise to the level of

prejudice that would warrant denial of leave to amend.”); *Langley v. Credit Suisse First Boston Corp.*, 89 Fed. Appx. 938, 944 (Sixth Cir. 2004)(recognizing that the inconvenience of having to file additional motions is not sufficient to show “undue prejudice”). For these reasons, Castro respectfully respectfully requests a finding that EMI has failed to satisfy its burden to articulate any specific facts or produce any evidence showing *how and why* it will suffer “undue” prejudice if Castro is allowed to plead additional facts and additional claims at this early juncture.

III. CONCLUSORY OF ALLEGATIONS OF “FUTILITY” ARE INSUFFICIENT

EMI also argues that Castro’s attempt to state a claim under the First Amendment would be “futile.” However, this argument suffers from the same fatal flaw as EMI’s first argument. It is a mere conclusory allegation unsupported by any facts or law. EMI properly explains that the test for determining “futility” is the same standard that applies when ruling on a 12(b)(6) motion. However, EMI then goes on to ignore this standard completely.

To backtrack a bit, EMI’s Rule 12(b)(6) motion to dismiss criticized Castro’s First Amended Complaint because it was insufficient in facts and because it stated only conclusory allegations. The Court agreed and pointed out the factual deficiencies. Indeed upon review of the First Amended Complaint, it became clear to Castro that he had not set forth the essential elements of an “as applied” First Amendment challenge and had not set forth any facts in support of that challenge. Although Castro’s response to the Rule 12(b)(6) motion to dismiss thoroughly set forth those elements and set forth the *very specific* facts in support of each element (complete with exhibits), the Court did not address any of those essential elements and did not address any of the facts (or exhibits) in support of those elements, presumably because they were contained only in a brief and not in the complaint itself. Castro understands this and has therefore, cured the factual deficiencies identified by the Court by providing voluminous pages of very specific and detailed facts (each supported by attached exhibits) in his Second Amended Complaint.

Now, those facts cannot be ignored (although EMI did completely ignore them in its response to the motion to amend). In fact, the Fifth Circuit requires this Court not only to acknowledge all the facts alleged in the Second Amended Complaint, but also to “take them as true” just as it would in a normal Rule 12(b)(6) analysis. See *Landovazo v. The Toro Company*, 301 Fed. App. 333 (5th Cir. 2008)(in which the Fifth Circuit specifically explains that it took “as true” all facts alleged in the amended complaint); see e.g., *Bradley v. Phillips Petroleum, Co.*, 2007 U.S. Dist. LEXIS 92981, at * 27 (S.D. Houston 2007)) (“The [amended] complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true.”); and *Issaquena v. Warren County, Mississippi Board of Supervisors*, 2008 U.S. Dist. LEXIS 121337, at *10 (“The [amended] complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true.”)

Here, EMI did not attempt to deny or question the facts alleged by Castro in support of his “as applied” First Amendment challenge. EMI did not even attempt to inform the Court of “why” or “how” the facts as now alleged are insufficient to state an “as applied” First Amendment challenge. Nor did EMI challenge the essential elements of that claim.

Those newly alleged facts are found both in the Statement of Facts (pages 3-20) and at pages 51-67 of the Second Amended Complaint, and are incorporated herein by reference. Those facts now clearly and specifically show that two (and only two) very specific subsections¹ of the Lanham Act (not the entire Act) are unconstitutional “as applied” because they fail “strict scrutiny” analysis.² The facts, which must be taken as true, now clearly show that the two regulations: (1) are NOT designed to further a “compelling” governmental interest on the facts of this case because they protect a common noun that should have never received trademark protection to begin with, and because EMI has never proven that the public associates the word

¹ Section 1065 and 1115(b) of the Lanham Act.

² They also fail “intermediate scrutiny” for the same reasons.

“entrepreneur” exclusively with a single, exclusive provider of goods and services as required by the Lanham Act; (2) are NOT “narrowly tailored” to achieve that compelling interest on the facts of this case because it has the effect of suppressing the honest, non-deceptive “commercial” use of Castro’s own registered trademark issued by the USPTO; and (3) do NOT use the “least restrictive” means to further that interest on the facts of this case because Congress could easily have required that the owner of the mark show tangible proof that it had attained “secondary meaning” as a condition of obtaining “incontestable” status.

If the Court cannot articulate any specific reason why the facts, taken as true, do not state a proper “as applied” First Amendment challenge to the two narrow subsections of the Lanham Act at issue, as required by the Fifth Circuit, then leave to amend should be granted. *See e.g., Lone Star Ladies Investment Club v. Schlotzsky’s, Inc.*, 238 F.3d 363, 368 (5th Cir. 2001)(addressing and analyzing each of the reasons alleged for why the amended pleading either would or would not be futile); *T Tom LLC v. West American Insurance Co.*, 2011 U.S. Dist. LEXIS 31694 (N.D. Oklahoma 2011)(addressing and analyzing each of the reasons asserted why the amended pleading either was or was not futile).

Moreover, in applying the Rule 12(b)(6) standard, the court is not allowed to resolve the case on the merits. *See Jones v. M.L. Greninger*, 188 F.3d 322, 324 (5th Cir. 1999)(“The issue is not whether the plaintiff will ultimately prevail, but whether he is entitled to offer evidence to support his claim”) *Id.* EMI’s only argument is to say in conclusory fashion that the Lanham Act can “peacefully coexist” with the First Amendment. This is a truism that is not even at issue before the Court. Castro has explained several times, and his Second Amended Complaint now makes it clear, that he is not seeking, and has never sought to invalidate the entire Lanham Act. He is only seeking to challenge how two very narrow subsections of the Lanham Act are being “applied” to the facts of this case. In its previous order, the Court did not quote the language of those two

subsections, did not look at the legislative history behind them, did not consider Justice Stevens criticism of those two subsections, did not consider the sordid history behind why EMI can now claim to own the word “entrepreneur,” and did not consider the practical and legal impact they have on the facts of this case. The Court simply ruled that the Lanham can “peacefully coexist” with the First Amendment. EMI’s response is fatally flawed because it did not address the language of the two subsections of the Lanham Act at issue, did not address each of the essential elements of an “as applied” First Amendment challenge as set forth in the Second Amended Complaint, and did not address the newly pled specific and detailed facts and exhibits which support each of those elements. Therefore, EMI has deprived this Court of the opportunity to address and analyze the futility issue, and has deprived the Court of any specific reasons for denying the motion to amend.

EMI’s only complaint about the facts stated in Castro’s Second Amended Complaint is that they are “long winded” and that they criticize the Ninth Circuit and the USPTO. This is ironic considering EMI’s Rule 12(b)(6) motion to dismiss alleged that the facts previously alleged were *not enough facts*. To state enough specific and detailed facts to satisfy this Court’s very high 12(b)(6) standard, Castro was required to get a bit “long winded.” He was also required to state very specifically “why” it violates the First Amendment (as applied) to give “incontestable” status to a common noun that should never have been given trademark protection to begin with. *See Park ‘N Fly v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 215 (Justice Stevens, dissenting). Justice Stevens was the first to criticize both the USPTO and the “inconstestable” subsections of the Lanham Act. Castro merely quoted from him. Had Justice Stevens had the opportunity to review the Ninth Circuit opinion in *EMI v. Smith*, he would have been severely critical of that opinion as well.

IV. THIS IS THE FIRST OPPORTUNITY CASTRO HAS HAD TO CURE DEFICIENCIES

EMI argues that the motion to amend should be denied because Castro has had “repeated” opportunities to cure the factual deficiencies. This belies the law in the Fifth Circuit, as well as the procedural history of this case. Before a motion to amend can be denied for “repeated failure to cure,” the fundamental principles of fairness and justice require that the plaintiff have been put “on notice” of what the deficiencies were to begin with. *See e.g., Boston & Maine Corp. v. Town of Hampton*, 987 F.2d 855, 866 (1st Cir. 1993)(“Courts of appeals, however, have commonly required of trial courts something similar to what occurred in this case – an opportunity to cure a deficiency *after notice* that the trial court had invoked a specificity of pleading requirement”)(emphasis added); *Judge v. City of Lowell*, 160 F.3d 67, 75 (First Cir. 1998 (“a trial court should provide plaintiff an opportunity to cure a deficiency *after notice* that the trial court intended to invoke a specificity of pleading requirement”)(emphasis added); *Krantz v. Prudential Investments Fund Management, LLC*, 305 F.3d 140, 144 (3rd Cir. 2002)(“A trial court has discretion to deny a plaintiff leave to amend where the plaintiff was *put on notice* as to the deficiencies in his complaint, but chose not to resolve them.”)(emphasis added); *see also e.g., United States of America ex. rel v. Regents of the University of California*, 363 F.3d 398, 404 (5th Cir. 2004); *Pittman v. Franklin*, 282 Fed. Appx.418 (6th Cir. 2008). The whole principle behind the doctrine of “repeated failure” to cure presumes that the plaintiff was at least on notice of what the deficiencies were to begin with.

Castro’s First Amended Complaint was filed (as of right without leave of court) for the purpose of correcting minor errors, and not for the purpose of attempting to cure any factual or legal deficiencies. It was THAT complaint which EMI challenged as factually deficient, not the original complaint. The Second Amended Complaint is being filed solely for the purpose of curing the deficiencies of which Castro has now been put on notice. This is Castro’s first and only attempt to cure those deficiencies.

EMI's next argument is that Castro should not be allowed to plead facts of which he was "already aware" when he filed his original complaint. However, this is not the law. The Fifth Circuit has expressly stated that the opportunity to amend is specifically for the purpose of allowing the plaintiff to plead facts "not initially pled that could, if necessary, cure the pleading defects raised by defendants." See *United States of America ex. rel v. Regents of the University of California*, 363 F.3d 398, 404 (5th Cir. 2004). Moreover, most of the facts pled in the Second Amended Complaint were only discovered as a result of the factual research prompted by EMI's motion to dismiss. EMI's motion to dismiss prompted Castro to do historical research into the USPTO archives, which is what revealed the comedy of errors and loopholes that led to the registration of a common noun as a trademark to begin with. Thus, it is EMI's own motion which has now revealed an even stronger set of facts which satisfies all of the essential elements of an "as applied" First Amendment challenge. EMI is now estopped from arguing that Castro should not be allowed to plead "new facts." The remaining "new facts" which Castro pled do not prejudice EMI in any way. Nor has EMI set forth any factual reasons explaining *how or why* they do. EMI will have ample opportunity to depose Castro and engage in discovery of those facts if and when it chooses to do so.

V. THE NEW CLAIM FOR DECLARATION OF UNENFORCEABILITY

In his Second Amended Complaint, Castro pled a new, never been pled, cause of action seeking a declaration of unenforceability. In this new cause of action, Castro has not challenged EMI's right to send a general "cease and desist" letter, but on a few very specific false representations contained in its "cease and desist" letter to Castro. As confirmation of its "bad faith," opposing counsel sent an email to Castro requesting that he withdraw his claim for a declaration that he has not violated the Anticybersquatting Act, and admitting implicitly that EMI had absolutely no legal or factual basis for saying in its letter that Castro had violated that Act.

See emails from Bill Barber (and Castro's response) attached jointly as Exhibit 1. Indeed, in its counterclaims, EMI failed to allege a violation of the Anticybersquatting Act, and Barber has explicitly represented that they do not intend to do so. *Id.* This is a tacit admission that EMI's cease and desist letter to Castro contained false representations of law and fact. EMI'S cease and desist letter was an illegal attempt to coerce Castro into turning over his valuable "real estate" (i.e. his domain name) to EMI without compensation.³

Castro has now, for the first time, requested that the Court (and the jury) take this into consideration and issue a ruling that principles of equity preclude EMI from asking the Court to grant it the equitable relief it seeks (i.e. an injunction). EMI's only attempt to defeat this claim is to repeat its argument that it has the general right to police its trademark. This argument no longer applies considering that Castro has abandoned his antitrust claims, and is not challenging EMI's right to police its trademarks in general. EMI never responded to the *very specific* bad faith conduct described in detail by Castro in the "Declaration of Unenforceability" portion of his Second Amended Complaint, and provided no reasons explaining why the new facts are "futile" when used to support an "unclean hands" claim. The reason is simple. This is not an attempt to revive an old claim. It is an entirely new claim.

VI. THE DECLARATION THAT EMI'S MARK IS NOT INCONTESTABLE AS TO CASTRO'S SENIOR MARKS

For the first time, Castro has filed a cause of action asking for a judicial declaration that EMI's marks are not "incontestable" as to Castro's "inherently distinct" marks. EMI does not and cannot point to anywhere in the First Amended Complaint where this cause of action has been previously pled. Indeed, Castro set forth new, never before filed facts in support of this entirely new cause of action. EMI has failed to provide the Court with any specific reasons why the new facts alleged in Castro's newly pled cause of action fail to state a claim for relief that can and should be granted,

³ Apple computers recently bought a domain name for \$4.1 million.

and fails to provide any reasons why it would be “unduly prejudiced” by the assertion of that new cause of action.

While it is true that the Court previously found “no merit” in Castro’s argument at the briefing stage of the Rule 12(b)(6) motion, this is largely because Castro’s complaint did not even allege this cause of action and the complaint at that time contained no facts in support of that theory.⁴ It is understandable why the Court found “no merit” in it. However, Castro has now thoroughly set forth a whole host of factual (and legal) reasons why EMI’s marks are not incontestable as to Castro’s marks. EMI has not even addressed the new facts Castro has pled in support of that cause of action, and has thus deprived the Court of any legitimate basis for denying leave to amend.

VII. THE ENTIRELY NEW, NEVER BEFORE FILED, CLAIMS

EMI does not even attempt to provide reasons why Castro’s new, never before filed, claims do not state a cause of action. Nor does EMI provide the court with any specific reasons why or how it will be prejudiced by these new causes of action. Instead, EMI makes fundamental misrepresentations of case law in a futile attempt to defeat Castro’s new claims. EMI first relies on *In the Matter of Southmark Corporation v. Shulte Roth & Zabel*, 88 F.3d 311 (5th Cir. 1996). First, *Southmark* was a bankruptcy case with dramatically different facts from the instant case. The amended pleading sought to add a “fraudulent transfer” claim. Second, the Fifth Circuit specifically pointed out that the “undue delay” in alleging facts was coupled with “undue prejudice” to the other party. *Id.* at 315. Third, the motion for leave to amend was filed thirty eight months after the “fraudulent transfer” at issue was made. EMI is well aware of the elementary principle of law that “tardiness” alone is not sufficient reason to deny a motion for leave to amend. See *Mayeaux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 427 (5th Cir. 2004)(“And we know that delay alone is an insufficient basis for denial of leave to amend: The delay must be undue, i.e., it must prejudice the nonmoving party or impose unwarranted burdens

⁴ This Court has already implicitly found that arguments made in a brief do not amount to a cause of action.

on the court"); *Langley v. Credit Suisse First Boston Corp.*, 89 Fed. Appx. 938, 944 (Sixth Cir. 2004)("Unjustified delay alone could not serve as the basis for denial of the motion for leave to amend"); and e.g., *Nance v. Gulf Oil Corp.*, 817 F.2d 1176, 1179 (5th Cir. 1987)(allowing an amendment on the "eve-of-trial" because there was no showing of undue prejudice); *Dubicz v. Commonwealth Edison Company*, 377 F.3d 787, 793 (7th Cir. 2004)("delay alone is normally an insufficient reason to deny a motion for leave to amend"). Yet EMI specifically failed to disclose to the Court that the delay in *Southmark* was coupled with "undue prejudice." In this case, EMI has deprived the Court of any specific facts showing how or why it will be prejudiced by Castro's new causes of action.

EMI also relies on *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 608 (5th Cir. 1998). EMI also fundamentally misrepresents the holding of that opinion. The *Price* opinion actually supports Castro's request for leave to amend. In *Price*, the district court not only put the plaintiff on notice of what the defects in its pleadings were, it actually ordered the plaintiff to file a new pleading "setting forth in more detail and specificity the facts on which plaintiff relied in their RICO complaint." *Id.* at 605. It was only *after* the court put the plaintiff on notice that the plaintiff "repeatedly" failed to set forth sufficient facts to allege a proper RICO claim. Moreover, it was only *after* the court put the plaintiff on notice and *after* the plaintiff attempted to cure the deficiencies that the defendant filed its Rule 12(b)(6) motion. Thus, not only does EMI misrepresent the basis of the opinion, EMI fails to point out that the district court in that case actually gave the plaintiff several opportunities to cure the deficiencies *after* putting it on notice. Ironically, EMI uses this opinion to argue that this Court should deprive Castro the opportunity to cure factual deficiencies after receiving notice *for the first time* of what those deficiencies are.

VIII. THE FRIVOLOUS "MEET AND CONFER" ISSUE

EMI argues that Castro failed to “meet and confer,” but in the same breath admits that Castro did call opposing counsel and that the two actually had a conversation about the proposed amendment. EMI also failed to disclose to the Court that this was actually Castro’s *third attempt* to “meet and confer.” The first attempt was sent by email on November 23, 2010. See Castro’s affidavit and emails attached jointly as Exhibit 1. The second attempt was sent by email on May 10, 2011. *Id.* Although it is not customary for attorneys to ask the Court to get involved in a “swearing match” between two attorneys over the substance of a phone conversation, opposing counsel’s affidavit required Castro to provide his own affidavit to correct factual inaccuracies. Castro’s affidavit attached hereto as Exhibit 1 clarifies exactly what happened. Thus, EMI’s argument that the motion for leave to amend for failure to meet and confer is based on inaccurate representations to the court. *Id.*

On a separate note, Castro was only forced to include substantive arguments in support of his Motion For Leave to Substitute Exhibit because Bill Barber failed to respond to Castro’s email requesting his consent to substitute the exhibit. See Exhibit 1. Barber failed to disclose to the Court that he ignored Castro’s request. Castro was only forced to make the arguments in support of his motion because Barber refused to respond to Castro’s attempt to meet and confer (via email). *Id.*

IX. CONCLUSION

EMI has also failed to meet “head on” the new facts pled in support of the claims Castro wishes to revive and fails to provide the Court with any specific reasons under Rule 12(b)(6) jurisprudence why those new facts, *taken as true*, fail to state a claim for relief that can be granted. EMI has also failed to provide the Court with any specific factual reasons explaining how or why it will be “unduly prejudiced” by Castro’s new claims.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this pleading was filed with the Clerk of the Court using CM/ECF system, which will send a notification of a Notice of Electronic Filing to the following counsel of record on June 20, 2011:

	William G. Barber Pirkey Barber, LLP 600 Congress Avenue, Suite 2120 Austin, Texas 78701
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Daniel R. Castro

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**Daniel R. Castro
Plaintiff**

v.

**ENTREPRENEUR MEDIA, INC.
Defendant**

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**CIVIL ACTION NO:
A:10-CA-695-LY**

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

Before the Court is Plaintiff's Motion For Leave to File Second Amended Complaint. The Court having considered the motion, and all responsive pleadings, is of the opinion that the Motion should be granted.

ACCORDINGLY, IT IS ORDERED that the clerk of the court shall file stamp the Second Amended Complaint and include this item as one of the live pleadings in the docket sheet for this case.

Plaintiff shall have up to and including June ____, 2011 to file its response to the Second Amended Complaint.

Signed and executed this ____ day of May 2011.

The Honorable Lee Yeakel