

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
OPENMIND SOLUTIONS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:11-cv-01883-JMF
)	
DOES 1 – 565,)	Magistrate Judge: Hon. John M Facciola
)	
Defendants.)	
_____)	

PLAINTIFF’S MOTION FOR LEAVE TO AMEND THE COMPLAINT

Plaintiff Openmind Solutions, Inc. hereby moves this Court for leave, pursuant to Federal Rule of Civil Procedure 15, to amend the Complaint to name “Eduardo Halverson” as one of the Defendants in this case. Plaintiff has ascertained Mr. Halverson’s identity through the discovery previously granted by this Court and now seeks leave to name Mr. Halverson as a Defendant in this action. Pursuant to LCvR 15.1, the proposed Amended Complaint is attached hereto.

FACTUAL BACKGROUND

On October 25, 2011 Plaintiff brought this action for copyright infringement against unknown Defendants. (ECF No. 1.) In order to identify the unknown Defendant, Plaintiff sought leave to issue subpoenas on the Defendants’ Internet Service Providers (“ISPs”) to obtain their identifying information. (ECF No. 3.) On November 22, 2011, the Court granted Plaintiff’s discovery motion. (ECF No. 4.) Pursuant to the Court’s order, Plaintiff issued subpoenas on the relevant ISP.

Mr. Halverson’s ISP responded to Plaintiff’s subpoena and identified “Eduardo Halverson” as the individual associated with one of the Internet Protocol (“IP”) addresses over

which Plaintiff observed infringing activity. Plaintiff now seeks leave from the Court to amend the Complaint in this case, and name and serve Mr. Halverson as a Defendant in this case.

STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). However, “the court should freely give leave when justice so requires.” *Id.* “It is common ground that Rule 15 embodies a generally favorable policy toward amendments.” *Davis v. Liberty Mut. Ins. Co.*, 871 F.2d 1134, 1136-37 (D.C. Cir. 1989) (citations omitted). The decision whether to grant leave to amend a complaint is within the discretion of the district court, but “[t]he presumption runs in the plaintiff’s favor that he may amend his complaint” *Steinbuch v. Cutler*, 463 F. Supp. 2d 1, 3 (D.D.C. 2006). “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

DISCUSSION

Under the Federal Rules, “[t]he court should freely give leave [to amend pleading] when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see also Browder v. Director, Ill. Dep’t of Corrections*, 434 U.S. 257, 263 n. 7 (1978) (explaining that leave to amend a complaint under Rule 15(a) “shall be freely given when justice so requires.”). Justice so requires here, because without a named Defendant in this case, Plaintiff’s claims for copyright infringement cannot proceed. Courts liberally allow amendment to allow the case to progress. *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. 1996) (describing “Rule 15(a)’s liberal standard for granting leave to amend . . .”). Although the grant or denial of leave to amend is committed to a district court’s discretion, it is an abuse of discretion to deny leave to amend unless there is sufficient reason,

such as “undue delay, bad faith or dilatory motive ... repeated failure to cure deficiencies by [previous] amendments ... [or] futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). These defects are not present here. The Court should therefore grant Plaintiff leave to amend the Complaint and name and serve Mr. Halverson as a Defendant in this case.

CONCLUSION

The Court should grant Plaintiff leave to amend the Complaint to name “Eduardo Halverson” as one of the Defendants in this case because “justice so requires.”

Respectfully submitted,

OPENMIND SOLUTIONS, INC.

DATED: October 23, 2012

By: /s/ Paul A. Duffy
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 23, 2012, all counsel of record who are deemed to have consented to electronic serve are being served a true and correct copy of the foregoing document using the Court's CM/ECF system, and a true and correct copy of the foregoing was served on Eduardo Halverson via first-class mail, postage prepaid, at the address provided by his Internet Service Provider.

DATED: October 23, 2012

/s/ Paul A. Duffy