

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

EQUINE LEGAL SOLUTIONS, PC,

Plaintiff,

v.

**THIS OLD HORSE, INC.; NANCY
TURNER; JOTFORM, INC.; GOOGLE,
LLC,**

Defendants.

Case No. 3:22-cv-269-SI

OPINION AND ORDER

Rachel Kosmal McCart, PRESERVE LEGAL SOLUTIONS PC, 38954 Proctor Blvd., Suite 186, Sandy, OR 97055. Of Attorneys for Plaintiff.

William G. Wardlow, WARDLOW LAW LLC, 111 NW Hawthorne Ave, Suite 7, Bend, OR 97703. Of Attorneys for Defendants This Old Horse, Inc. and Nancy Turner.

John D. Ostrander and William A. Drew, ELLIOTT, OSTANDER & PRESTON PC, 707 SW Washington Street, Suite 1500, Portland, OR 97205. Of Attorneys for Defendant Jotform, Inc.

Michael H. Simon, District Judge.

Equine Legal Solutions, PC (Equine) brings this lawsuit against This Old Horse, Inc. (TOH), Nancy Turner (Turner), and Jotform, Inc. (Jotform).¹ According to Turner and TOH,

¹ Equine voluntarily dismissed its claims against Google, LLC.

Turner is the President of TOH, a volunteer-based 501(c)(3) nonprofit equine welfare organization. This dispute arises from the use of legal forms that Equine created and copyrighted. Against all defendants, Equine alleges copyright infringement. Equine also alleges against only TOH and Turner breach of contract and conversion. Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, Turner moves to dismiss with prejudice all three claims against her, arguing that she is not personally liable for the actions that she took as an officer of TOH. Turner also contends that Equine's breach of contract claim should be dismissed because Equine may not pierce the corporate veil of TOH. In addition, raised for the first time in her reply brief, Turner adds that Equine's conversion claim is barred by the doctrine of independent duty.

After Turner's motion to dismiss had been fully briefed but before oral argument, Equine moved to amend under Rule 15(a)(2). In its proposed First Amended Complaint, Equine asserts only a claim of copyright infringement against TOH, Turner, and Jotform. TOH and Turner oppose Equine's motion to amend. They argue that Equine moved to amend in bad faith, seeking to avoid liability for "prevailing party" attorney fees and costs that would otherwise be available to TOH and Turner under the fee-shifting provision of the alleged contract. For the reasons stated below, the Court grants in part and denies in part Turner's motion to dismiss and grants Equine's motion to amend. Equine may file a First Amended Complaint within 14 days.

STANDARDS

A. Motion to Dismiss for Failure to State a Claim

A motion to dismiss for failure to state a claim may be granted only when there is no cognizable legal theory to support the claim or when the complaint lacks sufficient factual allegations to state a facially plausible claim for relief. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010). In evaluating the sufficiency of a complaint's factual allegations, a court must accept as true all well-pleaded material facts alleged in the complaint

and construe them in the light most favorable to the non-moving party. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). To be entitled to a presumption of truth, allegations in a complaint “may not simply recite the elements of a cause of action but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The court must draw all reasonable inferences from the factual allegations in favor of the plaintiff. *Newcal Indus. v. Ikon Off. Sol.*, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court need not, however, credit a plaintiff’s legal conclusions that are couched as factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

A complaint must contain sufficient factual allegations to “plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” *Starr*, 652 F.3d at 1216. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). “The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Mashiri v. Epsten Grinnell & Howell*, 845 F.3d 984, 988 (9th Cir. 2017) (quotation marks omitted).

B. Motion to Amend

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that the “court should freely give leave [to amend a pleading] when justice so requires.” A district court should apply Rule 15’s “policy of favoring amendments with extreme liberality.” *Price v. Kramer*, 200 F.3d 1237, 1250 (9th Cir. 2000) (cleaned up). The purpose of the rule “is ‘to facilitate decision on the

merits, rather than on the pleadings or technicalities.” *Novak v. United States*, 795 F.3d 1012, 1020 (9th Cir. 2015) (quoting *Chudacoff v. Univ. Med. Ctr.*, 649 F.3d 1143, 1152 (9th Cir. 2011)). A district court, however, may, within its discretion, deny a motion to amend “due to ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of the amendment.’” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (alteration in original) (quoting *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532 (9th Cir. 2008)). “Not all of the factors merit equal weight. As this circuit and others have held, it is the consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). Futility of amendment, however, “can, by itself, justify the denial of a motion for leave to amend.” *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). Generally, however, “[a]bsent prejudice, or a strong showing of any of the remaining [four] factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052 (alterations added, emphasis in original). When weighing the factors, all inferences should be made in favor of granting the motion to amend. *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

BACKGROUND

Equine alleges that it provides equine-related legal services to individuals in Oregon, California, Washington, and New York. Compl. (ECF 1) at ¶ 5. As a part of this business, Equine developed a series of copyrighted legal forms for equine-related transactions. *Id.* at ¶ 10. Parties can access these forms on Equine’s website and download them for a fee after agreeing to a “License Agreement” (Agreement). *Id.* The Agreement “specifically prohibits Plaintiff’s customers from editing Plaintiff’s forms or otherwise creating derivative works from Plaintiff’s

forms.” *Id.* at 11. Equine’s Agreement also prohibits Equine’s customers from reselling Equine’s forms or posting them to the internet. *Id.*

According to Turner and TOH, Turner is the President of TOH, a 501(c)(3) nonprofit organization. Equine alleges that Turner “at all relevant times . . . acted as an employee or agent of Defendant TOH.” *Id.* ¶ 13. On June 18, 2013, Turner visited Equine’s website, purchased three items—the “Equine Boarding Forms Package,” the “Riding Instruction Agreement Package,” and the “Equine Donation Agreement (EDA),”—and downloaded these documents. *Id.* ¶ 14.

After downloading the documents, Turner and TOH allegedly used the “Equine Boarding Agreement” (EBA) to create a derivative document (Doc 1), which contained “multiple paragraphs nearly identical to sections of Plaintiff’s Equine Boarding Agreement.” *Id.* ¶ 15. Equine also alleges that Turner and TOH visited Jotform’s website, which includes a “full-featured online form builder that makes it easy to create robust forms and collect important data.” *Id.* ¶ 16. Turner and TOH purchased a subscription to Jotform’s service and created an online, fillable form from Doc. 1 (Doc. 2). *Id.* ¶ 16. Turner and TOH also allegedly used the EDA to create a document “nearly identical” to the EDA (Doc 3). *Id.* ¶ 17. They then allegedly used Jotform’s service to create an online fillable form from Doc. 3 (Doc. 4). *Id.* ¶ 18.

Equine contends that after Turner and TOH created Doc. 2 and Doc. 4, these documents became available to the public on Jotform’s website. *Id.* ¶ 21. Equine further alleges that Turner and TOH used the allegedly infringing documents “in the business operations” and that Turner and TOH distributed these documents to “an unknown number of additional parties.” *Id.* ¶ 28. Equine contends that because of the actions of Turner and TOH, unknown other parties have

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