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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HOPSCOTCH ADOPTIONS, INC., et al., CASE NO. 1:09-cv-2101-LJO-MJS

Plaintiff,

ORDER DISMISSING DEFENDANT'S
COUNTER-CLAIMS WITHOUT PREJUDICE

v.

(ECF No. 102)

VANESSA KACHADURIAN,

Defendant.

_____ /

On February 18, 2011, Defendant Vanessa Kachadurian, proceeding pro se, filed her Answer to Plaintiffs' Complaint. (ECF No. 102.) In conjunction with her Answer, Defendant filed "Counterclaims" against Bennet Kelley, Plaintiff's counsel in this action, for violating the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, defamation, negligent misrepresentation, and false light.¹ (Id. at 13-27.)

Because Kelley is not a party named in the original Complaint, Kachadurian's claims

¹ Kachadurian's "Counterclaims" also name Robin Sizemore and Hopscotch Adoptions as Counter-Defendants. However, there are no factual allegations involving Hopscotch Adoptions and the only wrongdoing attributed to Sizemore is an allegedly defamatory letter sent to Armenian officials. Kachadurian fails to tie Sizemore's letter to any cause of action, fails to attribute any harm to Sizemore, and fails to seek relief from Sizemore. As such, the Court construes Kachadurian's "Counterclaims" as brought only against Kelley.

1 against him constitute a third-party complaint. See Fed. R. Civ. P. 14. Compare Fed. R.
2 Civ. P. 13(a) (counterclaim is asserted again “an opposing party”). As such, the claims are
3 governed by Federal Rule of Civil Procedure 14 which permits a defending party to “serve
4 a summons and complaint on a nonparty who is or may be liable to it for all or part of the
5 claim against it.” The Ninth Circuit has held that a third-party claim may be asserted only
6 when:
7

8 the third party’s liability is in some way dependent on the
9 outcome of the main claim and is secondarily or derivative
10 thereto. . . . [The claim] cannot simply be an independent or
11 related claim but must be based upon Plaintiff’s claim against
12 defendant. The crucial characteristic of a Rule 14 claim is that
13 defendant is attempting to transfer to the third-party defendant
14 the liability asserted against him by the original plaintiff. The
15 mere fact that the alleged third-party claim arises from the
16 same transaction or set of facts as the original claim is not
17 enough.

18 Stewart v. Am. Int’l Oil & Gas Co., 845 F.2d 196, 199-200 (9th Cir. 1988) (internal citations
19 omitted).

20 Kachadurian’s claims against Kelley allege that he made defamatory comments
21 about her on the internet and wrongfully used her image (along with the Court’s seal) on
22 his website. These new claims arise out of transactions which occurred well after the
23 events at issue in the original Complaint; the new claims are not related to events
24 described in the original Complaint.

25 As such, Kachadurian’s “Counterclaims” violate Rule 14 and will be dismissed
26 without prejudice. Kachadurian may bring her claims against Kelley in a separate action
27 if she so chooses. However, the Court will not allow a new party and new issues to be
brought into this case and unnecessarily cloud, confuse and delay this action.

1 Accordingly, the Court orders that the above-captioned action proceed on the
2 December 2, 2009 Complaint filed by Hopscotch Adoptions, Inc. and Robin Sizemore
3 against Vanessa Kachadurian. Bennet Kelley is not a party to this action. The already
4 noticed scheduling conference will proceed on March 3, 2011 at 10:30 a.m. in Courtroom
5 6. As previously noted, failure of a party to appear at this conference would violate a court
6 order and could result in sanctions, up to and including the striking of pleadings and other
7 termination sanctions.
8

9 For the reasons stated, it is hereby ORDERED that Defendant Kachadurian's
10 "Counterclaims" be DISMISSED WITHOUT PREJUDICE. This case shall proceed solely
11 on claims asserted in the December 2, 2009 Complaint.
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14 IT IS SO ORDERED.

15 Dated: February 24, 2011

16 *Michael J. Seng*
17 UNITED STATES MAGISTRATE JUDGE
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