



U.S. Department of Labor

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via hand delivery

Hon. Richard Manuel Clark, Acting District Chief Judge
U.S. Department of Labor
Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

Re: OFCCP v. Oracle America

Your Honor:

Per this Court's request, on behalf of OFCCP, please find the enclosed authorities that support OFCCP's oral motion at the Pre-Hearing Conference. The authorities, with relevant passages highlighted, are as follows:

- (1) Pre-Hearing Orders (submitted to show that no deadline for amending pleadings was ordered);
- (2) The governing rules of procedure.
- (3) *Island Creek Coal Co. v. Lake Shore, Inc.*, 832 F.2d 274, 278–81 (4th Cir. 1987) (reversing denial of motion to amend in case pending three-and-a-half years because plaintiffs only learned of defendants' knowledge of serious defect in relevant machine for the first time during a deposition taken more than three years after the filing of the case and "[t]he facts on which the count which the plaintiffs sought to add to the complaint by their motion to amend was well known to the defendant. Its experts had extensively investigated and studied those facts," and "[t]he motion did not, therefore, take the defendant by surprise or require it to investigate a claim of which it was not already cognizant.")
- (4) *Howey v. Unites States*, 481 F.2d 1187 (9th Cir. 1973) (permitting amendment adding party on second day of trial and setting forth Ninth Circuit test).

- (5) *Arias v. Mutual Central Alarms Servs. Inc., et al.* 182 F.R.D. 407, 418 (S.D.N.Y. 1998) (granting leave to amend after motion for summary judgment and joint pretrial order because issues raised “would require no additional discovery”).
- (6) *Jacobs Silver K Farms v. Taylor Produce LLC*, 101 F. Supp. 3d 962, 974 (D. Idaho 2015) (“[]Prejudice is the touchstone of the inquiry under Rule 15(a).”) (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)).
- (7) *Sprint Commc'ns Co., L.P. v. Time Warner Cable, Inc.*, No. 11-2686-JWL, 2013 WL 6589564, at *2 (D. Kan. Dec. 16, 2013) (finding good cause under Rule 16(b) to allow amendment of complaint because the “factual basis giving rise to a claim ... arguably did not arise until after the scheduling order deadline,”; prior to the amendment deadline, the defendant “directly denied having pre-suit knowledge of” the plaintiff’s asserted patents, the plaintiff “diligently worked to get [the defendant] to confirm or clarify [its] position. ... It is disingenuous for [defendant] to change its position as to when it obtained knowledge of the asserted patents, but then to object to [plaintiff’s] attempt to amend the complaint based on the changed position.”)
- (8) *Phoenix Technologies, Inc. v. TRW, Inc.*, 834 F.Supp. 148, 150-52 (1993) (granting defendant’s motion to amend counterclaim because it did not learn of plaintiff’s misrepresentations regarding its securing of relevant financing until key deposition, after which defendant moved to amend; rejecting plaintiff’s opposition because “the fraud claim pertains to plaintiff’s own knowledge and intentions which existed at the time the Agreement was entered into, and it is unlikely that plaintiff would need to conduct discovery in order to ascertain its own beliefs and intentions”).
- (9) *L. Tarango Trucking v. Cnty. of Costa Costa*, 181 F. Supp. 2d 1017 (N.D. Cal. 2001) (granting motion to amend complaint even after trial where there was no prejudice to defendants).
- (10) *C.F. v. Capistrano Unified School District*, 656 F. Supp. 2d 1190, 1197-98 (C.D. Cal. 2009) (finding good cause under Rule 16(b) to amend scheduling order to allow amended complaint where amended “will not result in any need for additional discovery”).
- (11) *Langbord v. United States Dep't of Treasury*, 832 F.3d 170, 188–89 (3d Cir. 2016) (affirming grant of motion seeking leave to add declaratory judgment to counterclaim because the claim “neither introduced new factual issues nor revived irrelevant disputes” and instead “involved matters the [counterclaim defendants] themselves had put at issue in their complaint....”) (internal citations omitted) *EEOC v. Michael Cetta Inc.*, No. 09-CIV-10601, 2011 WL 5117020, at *1 (S.D.N.Y. Oct. 27, 2011) (granting EEOC’s motion to amend “as a result of information learned during discovery and depositions”).
- (12) *Restoration Industry Assoc. Inc. v. Themapure*, 2014 WL 12603210 at * (C.D. Cal. Apr. 7, 2014) (“No prejudice exists when an amendment causes no delay in

proceedings and no additional discovery is required.”)

Sincerely,

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Regional Solicitor

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