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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PARADISE NORTHWEST INC.,
Plaintiff,

No. 2:09-cv-02027-MCE-DAD

v.

ORDER

SATVINDER PALSINGH RANHAWA,
LORNA MARIE RANDHAWA dba
GREAT EASTERN EXPORT &
TRADING COMPANY;

Defendants.

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Presently before the Court is a Motion for Leave to File a Second Amended Complaint filed on behalf of Plaintiff Paradise Northwest Inc. ("Plaintiff"). In order to effectuate that amendment, Plaintiff also asks that the Pretrial Scheduling Order ("PTSO") in this matter be modified accordingly.

In requesting leave to file its amended pleading, Plaintiff relied on the liberal standard for doing so under Federal Rule of Civil Procedure 15(a).

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1 Eminence Capital LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th
2 Cir. 2003) (“Generally Rule 15 advises the court that ‘leave
3 shall be freely given when justice so requires.’ This policy is
4 ‘to be applied with extreme liberality.’”) (internal citations
5 omitted).

6 Once a district court has filed a PTSO pursuant to Federal
7 Rule of Civil Procedure 16,¹ however, the standards set forth in
8 Rule 16, as opposed to Rule 15, are controlling. Johnson v.
9 Mammoth Recreations, Inc., 975 F.2d 604, 607-08 (9th Cir. 1992).

10 Here the PTSO was issued on February 19, 2010, and permitted
11 further amendments to the pleadings only on a showing of good
12 cause. Likewise, Rule 16 authorizes deviation from the PTSO
13 setting forth that prerequisite for amendment on a good cause
14 showing as well. See Fed. R. Civ. P. 16(b).

15 Unlike Rule 15(a)’s liberal amendment policy which focuses
16 on the bad faith of the party seeking to interpose an amendment
17 and the prejudice to the opposing party, Rule 16(b)’s ‘good
18 cause’ standard primarily considers the diligence of the party
19 seeking the amendment.” Johnson, 975 F.2d at 609. In explaining
20 this standard, the Ninth Circuit has stated that:

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28 ¹ Unless otherwise stated, all references to “Rule” or
“Rules” refer to the Federal Rules of Civil Procedure.

1 [a] district court may modify the pretrial schedule 'if
2 it cannot reasonably be met despite the diligence of
3 the party seeking the extension.' Moreover,
4 carelessness is not compatible with a finding of
5 diligence and offers no reason for granting of relief.
6 Although the existence or degree of prejudice to the
party opposing the modification might supply additional
reasons to deny a motion, the focus of the inquiry is
upon the moving party's reasons for seeking
modification. If that party was not diligent, the
inquiry should end.

7 Id. (citations omitted).

8 Although Plaintiff's alternative request to amend the PTSO
9 did ostensibly cite to the correct Rule 16 standard, the Motion
10 for Leave to File an Amended Complaint itself, as stated above,
11 cited incorrectly to Rule 15(a). Moreover, neither Plaintiff's
12 papers, nor Defendants' opposition, properly analyzed the issue
13 of whether Plaintiff was diligent in seeking to amend its
14 pleadings under a Rule 16 analysis. Consequently, by Order filed
15 May 3, 2011, the Court requested additional briefing on that
16 issue and continued the hearing on Plaintiff's Motion, originally
17 set for May 5, 2011, to May 19, 2011, in order to accommodate
18 that briefing.

19 Both Plaintiff and Defendants filed supplemental briefs on
20 May 10, 2011. Plaintiff maintains that the proposed amendment
21 conforms to proof adduced at several depositions in this matter
22 taken between March 1 and 3, 2011. Plaintiff alleges that those
23 depositions served to clarify the allegations previously made
24 against Defendants, and Plaintiff seeks to effectuate that
25 clarification by way of amendment. Since the present motion was
26 filed less than three weeks after the depositions in question
27 were completed, it appears Plaintiff has been diligent in seeking
28 to amend its complaint.

1 Moreover, because trial in this case is not scheduled until
2 January of 2012, there is no indication of any prejudice to
3 Defendants from permitting the requested amendment.

4 Defendants' opposition, for the most part, consists of
5 substantive challenges to the proposed amended pleading that,
6 while potentially appropriate in response to the Second Amended
7 Complaint, once filed, are not proper in the context of whether
8 Plaintiff should as an initial matter be permitted to file its
9 amended complaint. Although Defendants do claim that Plaintiff's
10 personnel should have known about the alleged details of various
11 alleged oral contracts between Plaintiff and Defendants as soon
12 as they occurred, the Court believes it not implausible that
13 certain details were not flushed out by Plaintiff's counsel until
14 depositions of its personnel were obtained. The Court cannot
15 conclude that any shortcoming in that regard amounts to a lack of
16 diligence per se.

17 Plaintiff's Motion for Leave to File Second Amended
18 Complaint (ECF No. 95, incorrectly docketed as a "Motion for
19 Leave to File Amended Motion to Dismiss") is accordingly
20 GRANTED.²

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27 ² Because oral argument was not deemed to be of material
28 assistance, the Court ordered this matter submitted on the
briefs. E.D. Cal. Local Rule 230(g).

1 Plaintiff may file the "Revised" Proposed Second Amended
2 Complaint attached to its Reply (ECF No. 100)³ not later than ten
3 (10) days following the filing of this Order. Although the Court
4 recognizes that Defendants' Opposition requests an across-the-
5 board extension of all dates set forth in the PTSO in the event
6 this motion is granted, any motion in that regard is neither
7 properly before the Court at this time nor adequately briefed.

8 IT IS SO ORDERED.

9 Dated: May 20, 2011

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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25 ³ Defendants' objection to the "Revised" Proposed Second
26 Amended Complaint, made on grounds that said revised version is
27 improperly procedurally as included within Plaintiff's reply, is
28 hereby overruled. The purpose of the "Revised" pleading was
simply to respond to Defendants' own argument that the Court's
interim dismissal of Plaintiff's RICO claim nullified various
portions of the proposed amended pleading as submitted before
that dismissal took place.